Review of Regulatory Framework in Coal Industry of India

FINAL REPORT

VOLUME 3

COUNTRY STUDIES

Submitted to

Department of Coal
Government of India

Jointly by

Tata Energy Research Institute (TERI)
&
International Mining Consultants (IMC)

March 31, 2000

LEGAL AND REGULATORY

STUDY OF THE

INDIAN COAL SECTOR

COUNTRY REPORT
AUSTRALIA

COUNTRY PAPER

AUSTRALIA

1. Sector Background

1.1 History

Black coal was first mined near Newcastle in 1799, with commercial mining having commenced in every state by 1898. In 1840 immigrant miners from the United Kingdom became the majority of the workforce in NSW mines, with convicts no longer being supplied. These new miners brought with them new techniques and culture from England and Wales, and by 1850 coal mining unions were formed. A high level of industrial disputation followed, as miners fought for increased pay and conditions, and mine safety. This gave rise to a history of government regulation which culminated in the formation of the Joint Coal Board (JCB) and Coal Industry Tribunal (CIT) in 1946.

By the mid 1920's black coal production in Australia was well over 13 million tonnes, with exports reaching one million tonnes per year. During this time most of the coal came from the Hunter Valley, Illawarra and Newcastle areas in NSW. However, the industrial disputations evident at the time disrupted coal production and damaged exports.

The Great Depression, and substitution of petroleum products for coal, triggered a decline in the industry which needed to be rationalised in the 1950's. The JCB oversaw the closing of many small mines and a large reduction in employee numbers. The CIT's settlement of the 1949 strike brought relative peace to the industry for the next twenty years.

As industry profitability increased by the late 1970's, so too did the level of industrial disputation. This reached an all time high in 1980. The 1980's also saw the widespread introduction of Longwall mining technology in underground mines. This increased production, but lowered employment. Australian coal exports increased rapidly during this time to become the world's largest exporter of black coal.

As for the value of coal mining to Australia's economy, in 1995-96, the black coal industry contributed 33% of the turnover, 45% of the total employment and 23% of the total value of exports for the entire Australian mining sector, which includes iron ore, oil and natural gas, gold, aluminum, etc. Value added from the black coal industry totaled $5 billion in 1995/96, or just over 1% of the Australian GDP, as shown below.

Size of the Coal Industry and Mining Sector relative to the Australian Economy, 1995/96

	Black Coal Industry	Mining Sector	Australia
Turnover ($b)	10	30	na
Value Added ($b)	5	19	489
Exports ($b)	8	34	98
Employment ('000)	25	56	8300

1.2 Production by Mining Method and Coal Type

In 1950, underground mines accounted for almost all the black coal production in Australia. Today they account for less than 30 per cent. This change reflects the development of export-focused open cut mines in Queensland's Bowen Basin and the Hunter Valley in NSW. By 1990, Queensland and NSW were producing roughly equal amounts of black coal. Saleable coal production from these two States, has increased from 77 mt in 1980 to 217 mt in 1997. Of the total produced in 1997, underground production accounted for 63 mt and surface production for 154 mt.

Australian domestic coal consumption has increased from 36.4 mt in 1980 to 60 mt. in 1997. The largest user is power stations with the steel industry second. There is some metal refining and cement manufacture.

Coal exports from New South Wales and Queensland have also risen from 88 mt in 1985 to 157 mt in 1997.

1.3 Employment

Employment in black coal mines peaked at the end of 1986 at 32,700. Since then it has declined by 27 per cent to 23,800 at the end of 1997. Most of the employment loss occurred at NSW underground mines. During the period 1986-1997 employment declined by 8000. At open cut NSW mines it increased by 700. Queensland underground mines increased employment by 200, and declined in open cut by about 900 persons.

1.4 Taxes From The Sector

The table below provides an indication of the coal mining generated revenues for the state government of New South Wales. While no comparable figures for Queensland have been included, income, payroll and land taxes would likely be similar. and in 1997/98, mining (primarily coal) generated royalty revenues of $294 million and taxes, fees and fines revenue of $3 million.

NSW Government Revenue from Mining Taxation ($m)

	1995/96	1996/97	1997/98
Taxes Levied on Companies:			
Royalties, Tenements and Licences	109	119	156
Income Tax	29	-20	-101
Diesel & Fuel Oil Excise Tax	19	5	5
Land Tax and Rates	11	16	7
Payroll Tax	50	49	64
Fringe Benefits Tax	5	5	7
Other Taxes	0	1	0
Total, Company Taxes	223	175	138
Taxes Levied on Employees - Group Tax	263	241	336
Total Taxes	486	416	474
Provision of Government Services	262	392	474
Total Government Revenue from Mining	748	808	948

2. The Basic Legal Framework

Australia has a three-tiered federal system of government - Commonwealth, State/Territory and Local.

Mineral, including coal, and petroleum resources in Australia are owned and managed by the State/Territory governments. The States set conditions for mineral exploration and development in State/Territory Mining Acts and related regulations which specify the procedures to be followed for coal exploration and exploitation. Other State/Territory legislation covers a broad range of issues including safety, employment, environmental protection, royalties and transport within Australia. State governments also levy taxes and charges for rail transport and in some cases for coal loading .

The national federal government (Commonwealth) has limited responsibilities under the Constitution. Areas of Commonwealth Government responsibility pertinent to the coal industry include the economy, international trade, commerce and industrial relations. It also has certain responsibilities and obligations for the environment, and heritage considerations. Through the Council of Australian Governments (COAG) and the network of Commonwealth/State Ministerial Councils, the Commonwealth is able to pursue the development of national standards and regulatory reforms in cooperation with other governments.

Local governments have considerable responsibility for planning matters (including buildings on mine sites), zoning and local environmental issues.

2.1 Organisation

2.1.1 New South Wales

The Department of Mineral Resources (DMR) is responsible for the mining sector in New South Wales. It is divided into 5 divisions, under the leadership of the Minister for Mineral Resources and a Director-General, with the following responsibilities:

- Geological Survey - Assessment and documentation of the state's mineral and energy resources and geology; distribution of information to encourage exploration and resource development.
- Resource Planning and Development - Allocation and management of exploration and mining titles, management of royalties and provision of legal services.
- Mine Safety and Environment - Administration of mine safety, environmental management and rehabilitation, and optimal resource recovery.
- Strategic Planning and Policy - Formulation and promotion of policy and regulations
- Information and Corporate Services - Management policies and practices.

Legislation administered by the DMR relevant to coal mining includes: Coal Acquisition Act 1981; Coal Mines Regulation Act 1982; Coal Ownership (Restitution) Act 1990; Mines Inspection Act 1901; Mines Inspection General Rule 1994; Mines Rescue Act 1994; Mines Subsidence Compensation Act 1961; Mining Act 1992; Occupational Health and Safety Act 1983; Pollution Control Act 1970; Clean Air Act 1961; Clean Waters Act 1970

2.1.2 Queensland

The Department of Mines and Energy (DME) is responsible for overseeing coal mining in Queensland. The DME is divided into six divisions under the leadership of the Minister for Mines and Energy, with responsibilities as follows.

- Deputy Director - General - Information and administrative services, planning resources, marketing and communications.
- Resource Development Division - Geological survey, resource policy, project facilitation and resource promotion, land access and tenure management, royalties and statistics.
- Safety and Health Division - Safety inspectorate (mines, electrical, explosives, gas and petroleum) and Board of Examiners of mine statutory positions.

- Energy Division - Energy policy, planning and monitoring and sustainable energy.
- Strategic Projects - Environmental policy and compliance and strategic project initiatives and coordination.
- Safety in Mines Testing and Research Station

The legislation administered by the DME relevant to coal mining include Coal Mining Act 1925; Mines Regulation Act 1964; Coal Industry (Control) Act 1948; Coal and Oil Shale Mine Workers (Pension) Act 1941; Coal and Oil Shale Mine Workers Superannuation Act 1989; Electricity Act 1994; Explosives Act 1952.

2.2 Procedures to Grant Coal Rights

The following discussion relates primarily to the policy established in NSW. The established policy for Queensland does not substantially differ from that of NSW.

Mining and exploration in NSW is dealt with under the Mining Act 1992, and associated Acts (eg. Coal Acquisition Act 1981, Coal Ownership [Restitution] Act 1990). There are also Regulations which accompany the Act which set out requirements and procedures. The Mining Act is progressively updated to ensure it is appropriate to the times. Exploration for coal is treated differently to other minerals mainly to cater for the known geological distribution and economic significance of coal in New South Wales.

Prospective individuals or companies need to obtain three different licences - Exploration Licence, Assessment Lease, Mining Lease. Procedures for obtaining these permits are set out in the Mining Act 1992. Parcels of government owned land (tenements) are generally offered for bid and include an exploration licence and/or an assessment lease.

2.2.1 Exploration Licence

An Exploration Licence is a title granted to individuals and companies to explore for minerals over a specific area of land. Applicants need to demonstrate that they have the financial and technical resources to carry out a satisfactory exploration program.

If a licence is granted, the applicant is issued with a licence document which will include the following:

- a plan of the area over which the licence is granted.
- the term of the licence.
- the conditions of the licence. (the protection of public and private interests, rehabilitation of the land, expenditure and reporting requirements, the lodgement of a security deposit and any other site specific matters).
- group of minerals.

2.2.1.1 Size and Shape of the Area Granted

The area granted will be of minimum size one unit; maximum size 100 units unless the Minister determines that it is appropriate to grant a licence over a larger area. (A unit is the area bounded by one minute of latitude by one minute of longitude.) A unit, depending upon the part of NSW in which it is located, embraces approximately 300 hectares.

2.2.1.2 Term

A licence may be granted for any period not exceeding five years and may be renewed for a further period not exceeding five years. In practice, licences are granted for two or three years, the length being related to the work program. The Act specifies that, on renewal the area renewed is not to exceed half the area of the licence unless the Minister is satisfied that special circumstances exist. With respect to coal, special circumstances will exist in most cases, due to the existing knowledge of the geological distribution of coal, taken into account when the licence was granted. However, with renewal applications, details will have to be provided in order to satisfy the Minister that special circumstances exist.

2.2.1.3 Access Arrangements

- The holder of a licence is not entitled to carry out prospecting operations on private land and Crown land held under a pastoral lease without an 'access' arrangement. Access arrangements may be either agreed to with the owner and occupier of the land or determined by an arbitrator (Section 140). Once agreed, the access arrangement sets out the terms and conditions under which a licence holder may conduct exploration activities on a particular parcel of land. An access arrangement may make provision for the following matters: the periods during which the licence holder is to be permitted access to the land; the parts of the land on which the licence holder may prospect and the means by which he may gain access to those parts of the land; the kinds of prospecting operations that may be carried out on the land; the conditions to be observed by the licence holder in prospecting on the land; the things which the licence holder must do to protect the environment while having access to and prospecting on the land; the compensation to be paid to any owner or occupier of the land; the manner of resolving any dispute arising in connection with the arrangement; the manner of varying the arrangement; such other matters as the parties to the arrangement may agree to include in the arrangement.

There are a number of steps which are outlined in the legislation which must be followed in obtaining an access arrangement from time limits for obtaining agreement to the appointment of an arbitrator. This includes an appeal procedure of an arbitration decision to the Mining Warden.

2.2.1.4 Compensation

Occupiers of Crown land and owners and occupiers of private land are entitled to compensation as a result of the exercise of the rights conferred by the licence or by an access arrangement. Therefore, a landowner/occupier will be compensated for any loss caused (or likely to be caused) by exploration.

The amount of the compensation is usually agreed upon between the landowner/occupier and the licence holder. If compensation has been agreed as part of an access arrangement, there is no need for a separate compensation agreement to be drawn up. Only stand alone compensation agreements are required to be lodged with the Director-General of the Department of Mineral Resources and these must be in writing and signed by both parties.

An access arrangement determined by an arbitrator must specify the compensation, as assessed by the arbitrator, to which the landowner/occupier is entitled.

2.2.1.5 Reporting

Licencees are required to lodge regular progress reports on all exploration activities carried out and major reviews after completing programs. A six monthly and annual report are required, in which the information will not be disclosed to the landowner/occupier except with the permission of the licence holder.

2.2.1.6 Expenditure

Licences include a condition specifying the amount required to be expended on prospecting operations during the term of the licence. In some smaller licences a minimum level of expenditure is not imposed.

2.2.1.7 Security

A security deposit (usually of $10,000 but may be more) must be lodged with the Department of Mineral Resources. If an applicant fails to comply with the conditions of a licence, then the licence may be cancelled and the security forfeited.

2.2.1.8 Specified Exploration Programs

Licences are usually granted with a specified exploration program approved by the Chief Geologist, Coal and Petroleum. Licences granted to cover the surface over underlying leases in order to allow exploration as required in relation to mining do not require specified exploration programs.

2.2.1.9 Public Expenditure

By policy the Minister will usually require as a condition of any exploration licence granted, the refund of any public expenditure on drilling exploration in the area. This may be paid in up to three annual installments.

2.2.1.10 Lodgement of Applications

An application for an exploration licence may be lodged with any Mining Registrar, and accompanied by:

- details of available finances demonstrating sufficient funds to carry out the exploration program. For individuals, a letter from a bank or accountant; and for companies, the latest annual report or audited accounts
- details of the proposed program of work and the exploration methods to be used
- details of the technical advisers to be employed (names and qualifications)
- statement indicating proposed exploration expenditures.
- the prescribed fee of $600 plus $500 per square kilometre or part thereof
- a diagram, of a size and quality appropriate for newspaper publication, indicating the general location of the land and its boundaries
- a copy of the Minister's consent to apply for a specified mineral, if applicable
- the area required marked on a standard 1:25,000 scale topographic-cadastral map, and
- a Land Status Report completed by a registered surveyor using the Parish Maps at the Department of Conservation and Land Management.

2.2.1.11 Processing of Applications

In most cases applications will be determined within a maximum period of six (6) months, but usually much sooner. There is no guarantee that the Exploration Licence holder will obtain a Mining Lease.

2.2.2 Assessment Lease

An Assessment Lease is a new title introduced by the Mining Act, 1992. An Assessment Lease enables a detailed evaluation of mineral deposits over an area which has been successfully explored under an exploration licence, or even held under a mining lease, while feasibility or marketing studies are carried out.

An Assessment Lease is generally applied for by holders of an Exploration Licence as exploration is nearing completion, and when a mineral deposit has been located that is not presently viable for mining development. This may be due to general economic conditions; insufficient selling price for the mineral; lack of current markets for the mineral; need for development of improved refining processes etc. The Assessment Lease allows an individual or a company to maintain tenure over the area in which the mineral deposit is located whilst further studies/appraisals of the above issues are made. If an Assessment Lease is granted, a document containing the same information as an Exploration Licence (as discussed above) will be issued to the individual/company.

2.2.2.1 Size and Shape of Area Granted

There is no maximum or minimum area for an Assessment Lease and it can be any shape. The applicant will have to justify the size of the area sought and changes relating to resource utilisation maybe requested.

2.2.2.2 Term

An Assessment Lease may be granted for a period of up to 5 years and renewed for further periods of up to 5 years.

2.2.2.3 Access Arrangements

An Access Arrangement must be executed to allow the holder to carry out exploration on any private land or Crown land held under a pastoral lease.

2.2.2.4 Compensation

Occupiers of Crown land and owners and occupiers of private land are entitled to compensation.

2.2.2.5 Expenditure

Leases may include a condition specifying the amount required to be expended on prospecting operations during the term of the lease.

2.2.2.6 Reporting

An annual report on exploration is required. Interim reports are required half yearly.

2.2.2.7 Security

A security deposit in the amount determined by the Minister must be lodged with the Department.

2.2.3 Mining Lease

A mining lease allows the holder to mine and also permits exploration operations and prescribed mining purposes to be conducted in association with mining operations. A mining lease is granted when an economically mineable deposit has been established, and the applicant has demonstrated the intent to mine the deposit.

In order to be granted a Mining Lease, the following must occur:

- approval by DMR of a resource utilisation proposal (including a resources/reserves statement) and a conceptual mine plan.
- conduct of the Planning Focus (environmental assessment) process for major projects.

2.2.1.6 Expenditure

Licences include a condition specifying the amount required to be expended on prospecting operations during the term of the licence. In some smaller licences a minimum level of expenditure is not imposed.

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- details of the proposed program of work and the exploration methods to be used
- details of the technical advisers to be employed (names and qualifications)
- statement indicating proposed exploration expenditures.
- the prescribed fee of $600 plus $500 per square kilometre or part thereof
- a diagram, of a size and quality appropriate for newspaper publication, indicating the general location of the land and its boundaries
- a copy of the Minister's consent to apply for a specified mineral, if applicable
- the area required marked on a standard 1:25,000 scale topographic-cadastral map, and
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There is no maximum or minimum area for an Assessment Lease and it can be any shape. The applicant will have to justify the size of the area sought and changes relating to resource utilisation maybe requested.

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In order to be granted a Mining Lease, the following must occur:

- approval by DMR of a resource utilisation proposal (including a resources/reserves statement) and a conceptual mine plan.
- conduct of the Planning Focus (environmental assessment) process for major projects.

- Address, not necessarily resolve, surface "improvements" issues applicable to section 62 of the Mining Act.
- The project has obtained a development consent from the determining authority under the *Environmental Planning and Assessment Act 1979.*

The lease document will include the following:

- A plan of the area over which the lease is granted.
- A list of the mineral or minerals for which the lease is granted.
- The term of the lease
- The conditions of the lease which will provide for protection of public and private interests, rehabilitation of the land, an expenditure commitment, the lodgement of a security deposit, the payment of royalty, and other site specific matters.
- A requirement to refund any public expenditure on drilling in the area that has not already been funded at the exploration licence phase.

If a lease is granted, the lessee is obligated to compensate land owners and occupiers and no operations can commence until a valid compensation agreement with the owners or occupiers is executed.

2.2.3.1 Size and Shape of a Lease

There is no minimum or maximum area for a mining lease. The applicant is required to justify the size of the area sought and changes relating to resource utilisation may be requested. Leases can be any shape.

2.2.3.2 Term

The maximum term for which a mining lease may be granted is 21 years or such longer period as the Minister, with the concurrence of the Premier, may determine. The lease is renewable.

2.2.3.3 Lodgement of Application

The application must contain the following information:

- A description of the area sought.
- A description of the surface area sought.
- An assessment of the coal resources or reserves contained in the area.
- Details of available finances to substantiate that the applicant has sufficient funds to carry out the proposed mining operations. The information should include a letter from a bank or other financial institution for an individual, or the latest annual report or audited account for companies.
- Details of technical advice available.
- Details of the program of work proposed to be carried out in the area (conceptual mine plan).
- Particulars of the status of the land; and the reserves, roads, catchment areas, forests and aboriginal lands claims. Such particulars are to be completed by an officer of the local office of the Department of Conservation and Land Management.
- The prescribed fee which is set at $600 plus $5,000 per square kilometre or part thereof.
- A diagram of a size and quality appropriate for newspaper publication indicating the general area and location of leases boundaries.

- A copy of the Ministers consent to apply for an allocated mineral, within an Mineral Allocation Area, if applicable.

2.2.3.4 Serving of Notices

Once an application which extends to the surface of private land or Crown land held under a pastoral lease has been lodged, the applicant must notify the following.

- Any owner or occupier of the land by serving a notice within 21 days after lodging the application. The notice must state that the application has been lodged, contain a description of the land over which the lease is sought, and state that objections to the granting of the lease on the grounds that the land is agricultural land may be made to the Minister within 28 days after the serving of the notice.
- The Director-General, DMR, by lodging, within 21 days after the date of serving notices to the owners and occupiers, a copy of the notices served to the owners and occupiers and a statutory declaration to the effect that such notice was served including the names and addresses of such owners and occupiers.

2.3 Regulation of Safety in the Coal Industry

Both Queensland and New South Wales have passed specific legislation for occupational health and safety in coal mines.

The main piece of legislation governing OHS in NSW coal mines is the *Coal Mines Regulation Act 1982.* NSW Coal Mines are also subject to the *Occupational Health and Safety Act 1983*. Open cut and underground metalliferous mines in NSW are regulated by the *Mines Inspection Act 1901*. Coal mines in Queensland are regulated under the *Coal Mining Act 1925:* In contrast to NSW, Queensland coal mines are exempt from the principal OHS statute for all other industries in Queensland, the *Workplace Health And Safety Act 1995*. Open cut and underground metalliferous mines in Queensland are regulated by the *Mines Regulation Act 1964*. Each State has its own specialist OHS inspectorate within the Departments.

To keep up with new hazards that are revealed through disasters or created by technological advances, the legislation is amended regularly. For example, the NSW Coal Mines Regulation Act 1982 has been subject to at least 43 amendments.

In contrast to general OHS regulation applying to most industries, the coal mining legislation specifics management arrangements to apply at mines: The Acts set out management and safety positions (examiner, first aide officer, ventilation officer, etc), the duties of the positions, and the training and experience requirements of people in these positions.

Penalties for breaches of the coal mining legislation are low compared with penalties applying to other industries. Maximum penalties are $10 000 under the NSW coal legislation, $1000 under the current Queensland legislation and $ 375 000 under the draft Queensland Bill.

It is also understood that the Queensland and NSW Minerals Departments rarely prosecute companies that do not meet their safety responsibilities. The annual reports of inspectorates indicate that inspectorates adopt an advisory approach to dealing with serious safety breaches. Actions include requiring the mine where a fatality occurred to review safety systems, distributing information about the fatal occurrence throughout the industry to avoid similar occurrences at other mines, and establishing judicial inquiries and coronial inquests.

2.4 Foreign Investment Guidelines

Australia's policy is to encourage direct foreign investment consistent with the needs of the Australian community, the development of internationally competitive and export-oriented industries and the creation of employment opportunities. Administration of the policy is based on guidelines rather than inflexible rules. It is intended to be practical and non-discriminatory.

2.4.1 Exploration

Foreign investors are not obligated to seek Australian partners in their mineral exploration activities and they are not required to seek approval under foreign investment policy to take up the exploration right. Proposals to acquire an interest in an existing exploration right (through "farm-in" or "farm-out" arrangements or rearrangements of interests in an exploration joint venture agreement) are exempt from examination under the *Foreign Acquisitions and Takeovers Act 1975.*

2.4.2 Development

Developments involving foreign companies with total investments of $A10 million or more arising out of mineral exploration activities require approval under the Commonwealth Government's foreign investment policy. Investments in new business valued between $A10 million and $A50 million will normally be approved without detailed examination. Proposals over $A50 million are normally approved unless considered contrary to national interests. Historically, delays due to national interests have been very rare. The policy also provides that all direct investment by foreign governments or their agencies requires prior approval regardless of size.

3. Fiscal Framework

3.1 Revenue Related Taxes

3.1.1 Income Tax

The company tax rate is currently 36% of taxable income. A number of deductions are available for companies involved in mineral exploration and development activities as follows.

- Immediate deduction of exploration and prospecting expenses.
- Immediate deduction of operating costs and deduction of capital expenditure on development of the mine over the lesser of 10 years or the mine life.
- Deduction on capital expenditures for certain transport facilities in equal installments over 10 years.
- Undeducted exploration and development expenditures can be treated as a transferable carry-forward loss to be set against the taxable income of other companies within the company group.
- Immediate deduction of capital and current environmental protection expenditure (except depreciable equipment) on pollution control or waste management.
- Deduction of environmental impact statement capital expenditure over the lesser of 10 years or the mine life.

- Immediate deduction of certain minesite rehabilitation costs where the taxpayer conducted extractive activities.
- Deduction for cash bids paid for mineral titles in equal parts over the lesser of 10 years or the mine life.

In addition to the above special deductions, the following deductions are generally available.

- Plant acquired after February 1992 may be subject to accelerated, broad banded depreciation rates.
- A development allowance of 10% of eligible capital expenditures for plant used in certain large scale projects, being deductible in the year the plant is put in service for producing income.
- Taxes and charges (royalties, port charges, etc) connected with income producing activities.
- Interest paid on project financing debt.
- Where companies initiate their own research and development activities, eligible expenses are 125% deductible in the year incurred.

3.1.2 Capital Gains Tax

Real capital gains on the disposal of an asset acquired after September 1985 are included in taxable income in the year the asset is disposed of. Income tax is paid at the company rate of 36%. If the asset is held for 12 months or more, its cost base is indexed to take inflation into account. A capital loss can be used to offset a capital gain in the immediate or future years, but cannot be used to offset general business income.

3.2 Non-Revenue Related Taxes

3.2.1 Royalties

Miners pay State governments for the use of black coal resources through royalties. In NSW, royalties are levied as a dollar amount per tonne of production (*specific royalty*), and in Queensland royalties are levied as a percentage of the value of production (*ad valorem royalty*).

The term royalty is used to describe both royalties paid direct to State Treasuries and royalties collected through rail authorities and remitted to State governments.

3.2.1.1 Royalty arrangements in Queensland

Since 1994, the Queensland Government has been phasing out the collection of royalties through the rail system and phasing in a new, higher royalty rate of 7 per cent, levied on the mine gate value of production.

Mines on old rail contracts pay a lower royalty rate (4-5 per cent), but are subject also to royalties built into their rail charges. By 2000, the new arrangements will be fully implemented and all mines will be subject to a 7 per cent royalty and commercially negotiated rail freight rates.

3.2.1.2 Royalty arrangements in New South Wales

In NSW, royalties are levied at the rate of $1.70 per tonne on all coal production, plus an additional $0.50 per tonne super royalty on open cut mines. The NSW Government is phasing out the collection of monopoly rents in rail charges. This monopoly rent amounted to $1.20 per tonne in 1996-97 and is to be eliminated totally by 1 July 2000.

In March 1997, the NSW Government introduced new arrangements for levying royalties on coal reject. The royalty rate is no more than 50 per cent of that applying to other coal, with each case being assessed individually. The other change in NSW that has affected royalty collections has been the compulsory purchase by the Government of some private coal titles.

Despite the fact that most coal is owned by the State Government, some land granted in NSW prior to 1884 included rights over coal and the royalties accrued to the landowner.The NSW Government passed legislation which revoked private ownership of the resource and compensated the landowners. Subsequently this legislation was was reversed allowing some titles to be restored. A study showed that the Government would lose some $300 million in coal royalty if this were to continue. New legislation has been passed which allows requisition of a small number of private coal titles and clarifies the Minister's power to refuse applications for restoration of former private coal titles. The new legislation also ensures that companies with open cut operations mining privately-owned coal will pay the $0.50 per tonne super royalty.

3.2.2 Payroll Taxes

The general revenue base of the States and Territories includes a tax on payrolls with the payroll exemption threshold ranging from $A456,000 to $A800,000 per annum. The tax is payable by all employers and is based on wages paid or payable. In most States this includes non-cash fringe benefits to employees. Generally, the rate varies between 5% and 7%. Some States apply a single marginal rate while others have progressive marginal rates or a deduction system, or both.

3.2.3 Fringe Benefits Tax

Employers generally are required to pay Fringe Benefits Tax (FBT) on the value of certain benefits provided to employees. A fringe benefit can be a right, privilege, service or facility such as the provision of a company car, subsidised accommodation and travel, entertainment, etc. The tax was levied at the rate of 48.5% for the financial year ending June 30, 1997.

Mining companies benefit from specific concessions in the taxation of benefits provided in remote areas (40 km from a population centre of 14,000 or 100 km from a population centre of 130,000 or more), and in the methods used to calculate some benefits such as work related travel in commercial vehicles.

3.2.4 Property Tax

All states in Australia have some form of property tax which relates to the value of the land and structures contained on the land. The tax is payable at a progressive rate where if the total value of land holdings is: less than $200,000 the tax is 0%; between $200,000 and $540,000 the tax is 0.2%; between $540,000 and $2,700,000 the tax is 3%: and over $2,700,000 the tax is 5%.

4. Environmental Framework

Although the Commonwealth Government has some responsibility regarding environmental protection (see below), the State and Territory Governments are the main authorities for issuing environmental clearances for projects within their State/Territory.

4.1 General Approvals Process

All exploration and mining projects in Australia must undergo some level of formal environmental impact assessment (EIA) and approvals process as established by the *Environment Protection (Impact of Proposals) Act 1974.* Although the process varies among the States, the main steps which provide a logical framework for indentifying, planning and managing likely environmental impacts are as follows.

1) Referral of a project to the government authority. This is normally done by the company itself or a government agency or minister having responsibility for mineral issues.

2) Government authority decides whether an environmental assessment is necessary - that is whether a project is environmentally significant - and if so, the required level of EIA. The decision by the assessing authority on how it will deal with the proposal usually draws on basic information provided by the proponent company such as location details, a brief description of the project and its duration, the infrastructure it will need, perceived environmental issues and their significance, and the proposed community consultation program. This is often presented as a formal document of advice which the proponent uses to both trigger the approvals process and inform the community.

3) Issue of the EIA guidelines by the assessing authority. Most EIA processes have several alternative levels of assessment appropriate to the environmental significance and the complexity of the project.

- Where it is clear from the initial advice that the company has adequately addressed environmental concerns and will be using adequate environmental management practices, the government authority may not require further assessment.

- A Public Environmental Report (PER) or similar document is generally used for proposals which are likely to be of only local or regional public interest and where potential environmental impacts are few or easily managed. A PER provides details of the proposed project including environmental impacts and proposed management techniques.

- An Environmental Impact Statement (EIS) or similar document is generally more comprehensive than a PER and may be required for major projects which attract wide public interest and/or deal with complex issues of environmental significance. It is usually required for proposals with significant potential impacts. These impacts will require detailed evaluation, be the subject of extensive community review and advice, and may need comprehensive environmental management programs.

- In most cases, an Environmental Management Plan (EMP) or an Environmental Management Overview Strategy (EMOS) is required for the granting and maintenance of a mining permit and provides the basis for assessment, public comment, approval and permit conditions.

4) Review and Approval. Once completed, the above documents are made available for public review. A PER is typically made available for public comment form 4 to 6 weeks, while the public review period for an EIS is 8 to 12 weeks.

A public inquiry (or Commission of Inquiry) may result from a public review. This is an official process of investigation used for very complex or controversial projects, involving hearings and submissions. Inquiries are particularly required and useful where many different public interests are involved, where new technologies or developments have been proposed, or where significant change in land use is proposed. Depending on the complexity of the issues, the public inquiry process may take several months but generally not more than one year. The proponent company responds to issues identified in the public review or inquiry. Based on the proponents response, a report and recommendations will be issued by the assessing authority.

Finally, the government authority, or in complex cases the Minister, will then issue an environmental approval for the project, usually with various conditions for operating, monitoring and reporting attached. Alternatively, the authority may not approve the project if they feel it would have an unacceptable effect on the environment.

5) **Performance Bond.** The final step in the approvals process is normally the submission by the proponent company of a performance security bond. The amount of the bond is set as the anticipated cost to perform ongoing and final reclamation for the project. This ensures that the cost of all rehabilitation is covered and the amount of the bond is reviewed periodically. If the company performs all required rehabilitation, the bond is returned, otherwise the money is used to perform necessary rehabilitation not performed by the company.

4.2 Commonwealth Government Responsibilities

- Although the State and Territory Governments have the main responsibility for environmental management of mineral activities, there is also Commonwealth legislation that requires the Commonwealth to take an active environmental role in certain situations. Developments that may require such a decision are developments on Commonwealth land and developments requiring foreign investment approval. The Commonwealth *Environmental Protection (Impact of Proposals) Act 1974* requires any Commonwealth Minister, who must make a decision relating to a proposal which has a potential to significantly affect the environment, to seek advice from the Minister for the Environment. This may result in an environmental assessment of the proposal being undertaken by Environment Australia. In the situation where both the Commonwealth and State Governments require environmental assessment of a project, the Commonwealth usually negotiates with the State to ensure that the State assessment process also satisfies the Commonwealth requirements, thereby overcoming potential duplication between the approval processes. Other legislation which may impose environmental conditions on Commonwealth decisions includes: *Australian Heritage Commission Act 1975; World Heritage Properties Conservation Act 1983; Endangered Species Protection Act 1992; National Parks and Wildlife Conservation Act 1975*

4.3 State Responsibilities

Most states require environmental management plans for operating mines and also inspect the operations for environmental compliance. The following provides a brief description of the applicable laws and institutions for Queensland and New South Wales.

4.3.1 Queensland

The applicable law governing environmental compliance in Queensland is the *Mineral Resources Act 1989* which requires applicants for exploration permits and mining leases to provide a statement acceptable to the minister specifying proposals for protecting the environment, including surface and ground water, and proposals for progressive and final reclamation. In 1991, amendments introduced the concept of an Environmental Management

Overview Strategy (EMOS) which effectively links the environmental planning and impact assessment processes with the actual environmental Plans of Operation including monitoring and rehabilitation programs.

Currently an Environmental Protection Policy is being developed in Queensland which will be separate from the Mineral Resources Act and provide more definitive regulations and guidelines for the approvals, impact assessment and operating management processes of exploration and mining projects.

Environmental compliance in Queensland is undertaken by the Environmental Compliance Division in the Department of Mines and Energy. This Division is divided into 3 branches: Impact Assessment, Regulation, and Planning and Technical Services. Regional offices undertake the bulk of the Divisions responsibility with regard to impact assessment and regulation.

4.3.2 New South Wales

The major applicable law governing environmental compliance in NSW is the *Mining Act 1992*. The Act requires applicants for exploration permits and mining leases to submit an EIS for public comment and government approval. The EIS has as its basis a conceptual plan for the whole of the life of the mine. This plan requires approval from the local council and/or the Department of Urban Affairs and Planning, the Environmental Protection Authority and the DMR. The major guideline for the EIS is the *Environmental Planning and Assessment Act 1979*.

Once approval is accepted, the proponent company is required to formulate and submit a Mining Operations Plan (MOP). The MOP provides in detail the mining systems and plans to be implemented and the environmental protection and rehabilitation systems to be employed. The MOP generally covers a period of 2 to 3 years and not more than 7 years. The plan is updated periodically and requires approval from the same authorities as for the EIS. Other major applicable environmental laws which the MOP must satisfy are the *Clean Air Act 1961*, the *Clean Waters Act 1970* and the *Noise Control Act 1975*.

Operating mining companies must also submit an Annual Environmental Management Report (AEMR). The AEMR:

- consolidates into one document all annual Government reporting requirements which relate to environmental management;
- provides the means of measuring progress towards attainment of the environmental objectives outlined in the MOP;
- outlines the environmental and rehabilitation targets to be achieved in the next 12 months.

The AEMR is reviewed primarily by the DMR but may also be referred for review by other interested local groups and Government agencies. The DMR provides a written response to the AEMR with comments on the adequacy of environmental compliance and/or directives to improve or come into environmental compliance.

The DMR is responsible for overseeing MOP's and AEMR's, for coordinating the involvement of other relevant Government agencies and for ensuring that the mining and rehabilitation operations are in compliance with applicable laws, requirements of the mining lease and objectives of the MOP. An environmental inspection of all mining operations is generally conducted at least annually by technical officers of the DMR.

5. Institutional Arrangements

The administrative structure and government organisations of the coal sector in Australia have already been covered previously. The following provides comment on the linkage of the transportation and power sectors with the coal sector.

5.1 Coal Transportation

Coal is the single largest commodity transported by rail and the export coal industry is heavily reliant on rail to provide transport to ports. In NSW, coal contributes 49% of freight revenue and in Queensland it makes up 70% of revenue.

5.1.1 Structure of Rail Authorities

Some reform of Australia's railways has occurred in the last few years mainly in the area of restructuring of pricing mechanisms and the opening up of freight services to competition from third parties, planned for the year 2000.

At present, State rail authorities provide all coal rail freight services in NSW and Queensland. However, the organizational structure of the two rail authorities have taken quite different directional changes. NSW has established separate businesses for different services and functions while Queensland has retained an integrated organisation providing all rail services. All have independent boards which are accountable to shareholding Ministries for their performance. In NSW each of the four corporations has its own independent Board, while in Queensland the four business groups are accountable to one Board

5.1.2 Coal Transport Pricing

Rail freight is a significant cost for exported black coal, averaging around 15% of the free on board (FOB) cost of production, excluding royalties. However, some mines freight is up to twice this share due to implicit royalties included in the rail charges.

Australia has an advantage in the international supply of black coal because mines are much closer to ports than many of its overseas competitors. Average coal hauls in NSW are 135 kms and in Queensland 250 kms. However, this advantage has been eroded by very high cents per net tonne kilometre (ntk) freight rates. While relatively short rail hauls have an influence on these rates, the two key contributing factors have been State governments using rail charges as a means of taxing the coal industry, and low productivity performance of the State rail authorities compared to world's best practice. Comparison of freight rates for similar length hauls for a sampling of railings (BIE, 1995) indicated that QR rates (including royalty) were around twice those of various US railways while NSW rates were 25% higher.

Freight rates of NSW and Queensland have been significantly higher than overseas rates primarily because of the governments' use of rail freights to collect implicit royalties from the coal industry. In both states, these implicit royalties, or monopoly rents, were not equitable across the board charges, but rather were set on the perceived ability of the individual mines' or companies' to pay. Both NSW and Queensland have begun to remove royalties and identified monopoly rents from coal freight rates. This should result in declining freight rates to 2000. However, as mentioned previously, the removal of rail freight royalties in Queensland will be off-set by higher general coal royalties at those mines paying a freight royalty. In NSW, the rail access charges for third parties will be set so as to provide RAC with a set % return on revalued assets. The percentage was originally to be set at 14% but raging debate over this currently underway suggests that a more reasonable 8% return is more likely.

5.1.3 Coal Ports

The performance of coal ports also has important implications for the competitiveness of Australia's black coal export industry. On average, port charges represent 6% of the FOB cost for export coal.

The coal industry in Australia is serviced by 6 ports and nine terminals. NSW is serviced by 2 ports containing 3 terminals, and Queensland is serviced by 4 ports with 6 terminals. All coal ports are government owned, however, the ownership and operators of the coal loading terminals vary between government and private investors.

In general, there is very limited opportunity for competition between coal ports, although at some ports there is competition between terminals. In most cases, there is no viable choice between ports due to transportation. There is potential indirect competition between ports, as each port represents a critical link in the mine to customer chain. These coal chains in the different regions are in competition for overseas customers. Therefore, inefficient or high cost ports risk losing business to ports in other regions due to higher overall coal cost.

Total coal port charges can be aggregated into three groups: terminal charges (stevedoring and capital contributions), ancillary charges (pilotage, towing, mooring) and port authority or government charges (tonnage, berth hire, wharfage, conservancy). The average split between the charges for Australian ports is roughly 60%, 10% and 30%, respectively. A significant portion of the port charges are terminal charges. In some cases, these terminal charges represent a nearly 46% return on the governments investment annually. Other ports charge special harbour dues which represent nearly 50% of the total port costs.

Total coal port charges in Australia are competitive by international standards. The average across all Australian ports in 1994 was A$4.31 per tonne compared to an international cost (3 ports) of A$5.00 per tonne (BIE). The BIE report also indicated that Australian ports were competitive in labour productivity and capital utilisation, but less positive regarding timeliness and reliability.

LEGAL AND REGULATORY

STUDY OF THE

INDIAN COAL SECTOR

COUNTRY REPORT

CANADA

COUNTRY PAPER

CANADA

1.0 Introduction

Canada is a very decentralised federal parliamentary system. Because the provinces own and manage all natural resources within their boundaries, there is no federal legislation regulating or managing the coal sector. This paper will concentrate on the two provinces which are the main producers of coal in the country – Alberta and British Columbia - and examine their legal, fiscal and institutional arrangements.

2.0 Overview of the Coal Sector in Canada

Coal mining has occurred in Canada since the early 1600's (in the east) and the early 1800's (in the west). The coal is mainly bituminous with 95% mined from the surface and the remaining 5% underground. There are 24 operating mines in 5 provinces, 13 of which are involved in the export market. British Columbia, Alberta and Saskatchewan account for 94% of the total coal production in the country. Total Canadian coal production in 1998 was 75,379,539 mt.

Coal demand is centred on the large steel industry in Ontario and electricity generation in five provinces (amounting to 20% of all electricity generation in Canada). Industrial use of coal is mainly in cement manufacturing with some small consumption in other industrial boilers.

Direct employment in the coal industry is 7,950 with direct and indirect employment from coal mining and transportation at 52,000. When electricity generation is included total employment raises to 73,000.

Imports into Canada amount to 18,674,698 mt and exports are 34,178,658 mt. Domestic consumption is 58,846,194 mt. British Columbia and Alberta are the only two provinces exporting coal. In 1998,Canadian coal was exported to 22 countries.[1]

One of the major issues facing the Canadian coal industry is the ongoing deregulation of the electricity industry. Competing resources, such as natural gas, and developments in addressing the emissions of green house gases, will be other factors which affect the health of the coal sector. To address these issues, the industry will have to continue to advance technologically and minimise direct costs.

3.0 Basic Legal Framework, Applicable to the Coal Sector

3.1 Constitutional Jurisdiction

The Canadian Constitution is embodied in the Canada Act. Section 92 outlines the areas of provincial responsibility. Pursuant to that section, ownership and management of all natural resources, including minerals, is a provincial matter. As such, the provinces enact legislation and manage and control the exploration for, and exploitation of minerals, including coal. Each province has its own mining law and subsidiary legislation. Taxation is both a federal and provincial matter although the main income and corporate tax legislation is federal with provinces enabled to set sales taxes, payroll taxes, and some income tax. The taxation system is complicated and varies from province to province.

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[1] These countries are: Australia, Belgium, Brazil, Chile, Egypt, France, Germany, India, Italy, Japan, South Korea, Mexico, Netherlands, Pakistan, Portugal, Romania, Spain, Sweden, Taiwan, Turkey, United Kingdom, and the United States.

The federal government has jurisdiction over minerals on federal Crown lands, which exist mainly in the northern territories and in national parks within provinces. However, it has delegated its authority over minerals to the territorial governments of Yukon, Northwest Territories and Nunavut which manage and control the minerals pursuant to territorial legislation. As such, the federal government has no real jurisdiction over minerals and its Department of Natural Resources oversees a chiefly information function, the Geological Survey of Canada (which deals in geological information on an interprovincial basis), and creates a positive national investment climate. The federal government does play a role through imposition of taxes and has created incentives for the mining industry across the country. The Provinces jealously guard their jurisdiction over natural resources due to its importance to their economies and employment.

3.2 Main Laws Applicable to Coal (Alberta and British Columbia)

A. Alberta

Four major pieces of legislation apply to the coal sector: the Minerals and Mines Act, Coal Conservation Act, Coal Mines Regulations Act, and the Coal Mines Safety Act.

The Minerals and Mines Act applies to all mines, quarries and minerals. Part 2 covers coal and contains the main administrative aspects of coal such as setting of rental fees, location of leases, term (15 years), renewal of term (15 years each renewal), registration of transfers and security notices, royalty and other such matters. An exploration licence is issued by the Alberta Energy and Utility Board (AEUB) and is in effect until surrendered or cancelled. The terms and conditions of exploration are determined in the Exploration Regulations under the Mines and Minerals Act, Public Lands Act, and Public Highways Act (if applicable).

Anyone wanting to explore for coal in Alberta must obtain the following:

- An Exploration Licence
- An Exploration Approval. This is required if exploration in any way disturbs the land surface and is issued by the Environment Department (Land Surface Conservation and Reclamation Act) and Alberta Energy (Exploration Regulations of Mines and Minerals Act). The applicant must make a submission outlining how exploration will be conducted and how surface disturbances will be reclaimed.
- AEUB Permit (Coal Conservation Act). This is required if the licensee plans to drill to a depth beyond 150 metres, mechanically excavate a trench, or develop an adit, tunnel, shaft, slope or bulk sample pit.
- Water Permit (Water Resources Act). This is required if exploration will involve overburden draining, diversion of either surface or sub-surface water, or depressurise basal acquifers.

The Coal Conservation Act establishes the overall regulation of the coal sector development. Its purpose is to provide for issuance of leases, as well as to ensure the proper appraisal of Alberta's coal resources and requirements for coal both within and outside the province and the conservation and prevention of waste. As well, the Act establishes the control of pollution, and the observance of safe, effective practices in the exploration and development of coal. It also provides for collection and dissemination of all information pertaining to the coal sector.

Anyone planning to submit a development plan for coal must first submit a Preliminary Disclosure under the Coal Development Policy for Alberta. The purpose for the disclosure is to discover whether, if all departmental and agency requirements were met, the Government would give consideration to the project in a general form and at the time proposed. It may be required by Alberta Energy for major modifications to an existing mine or for new, environmentally sensitive proposals. The decision to proceed is made by Cabinet. Once the approval has been made, it is necessary to hold a public meeting to inform the public of the proposal at least 45 days before the formal hearing of the full application for a lease by the AEUB.

Applications for a coal lease are made to the AEUB which deals with the leases, inspections of mines and environmental hearings with regard to coal projects. A reclamation scheme plan as well as a mine plan, environmental assessment and monitoring plan, an economic assessment, technical information (mine plan, hydrology etc), and if necessary, historical resources and /or transportation impact assessments must be filed at the same time. In addition, a licence is required to begin mining operations once the lease is issued and the mine built.

The Coal Mines Regulation Act and Coal Mines Safety Act address the regulation of mine health and safety provisions. The Safety Act applies to all mine sites, processing plants, employed persons, and all coal producers .

Other legislation with which an applicant must comply are: Land Surface and Conservation Act, Water Resources Act, Clean Air Act, Clean Water Act, and to a lesser degree the Forestry Act, Wildlife Act, and various transportation acts as well as the federal Fisheries Act. The federal government has jurisdiction over fishery in both sea and land waters in Canada and therefore the Fisheries Act applies to mining operations should rivers, lakes or other bodies of water containing fish be affected by the mining operation.

In order to explore for coal, the applicant must obtain a right of entry. If the land is owned by the Crown, this is done under the Public Lands and Regulation Act; if private land there must be an agreement with the owner of the land and if an agreement is not forthcoming a Right of Entry Order from the Surface Rights Board (which will determine compensation to the owner) must be obtained.

To obtain a lease, the applicant must have the following:

- Surface rights (Public Lands Act) (Land Surface and Reclamation Act)
- Ministry of Environment approval of the Environment Assessment (Various pieces of environmental legislation and Coal Conservation Act)
- AEUB permit and licence to operate (Coal Conservation Act)
- Development and reclamation approval (Land Surface and Reclamation Act)

- Water resource permit and licence (Water Resources Act)
- Clean air permit (Clean Air Act)
- Authorisation of Cabinet if production exceeds 45,000 t. per annum (Coal Conservation Act)
- Industrial development permit if production exceeds 230,000 t.p.a. and is not used in a power plant but is consumed in Alberta. (Coal Conservation Act)
- Historical resources impact assessment (Alberta Historical Resources Act) if required
- Transportation impact assessment (various transportation laws), if required.

The AEUB makes all final approvals under all the legislation, except for the water, and clean air permits and the approval of the EIA which are done directly by the Ministry of Environment. Any applications to operate a coal mine must be reviewed by both the AEUB and Alberta Environmental Protection (AEP). The two agencies have an agreement regarding the approval under their respective legislation for approval of the environmental plan and conservation and reclamation plans. The applicants are urged to combine the two applications into a single submission and both agencies do a review, which includes the submissions of those who are directly affected by the proposed mine.

Under the Environmental review, the approval is done by the Director of the Land Reclamation Division of Alberta Environmental Protection. In making the decision, he considers all of the information submitted including Statements of Concern filed by persons directly affected by the proposed project. If anyone is unhappy with the final decision, an appeal can be made to the Environmental Appeal Board and a hearing is held, after which the Board's recommendation is made to the Minister who makes a final decision.

B. British Columbia

Coal mining in the Province of British Columbia is done under two main pieces of legislation - the Mines Act and the Coal Act and the subsidiary legislation to those Acts, especially the Mineral Exploration Code applicable to both of those Acts.

The Mines Act is a general piece of legislation which applies to all mining activity in the Province. It establishes the office of Chief Inspector and outlines the powers of that position, issuance of permits and the establishment of reclamation funds, as well as general provisions relating to safety at mine sites and the powers of inspection. The Coal Act is specific to coal mining exploration and development in the Province.

An applicant for coal exploration must hold a free miners certificate issued under the Mineral Tenure Act. To explore for coal specifically requires a licence under the Coal Act and a permit under the Mines Act. The licence gives the holder exclusive right to explore for and develop coal in the area and to enter the location and the right to cut timber, on a limited scale for grid lines, stream crossings, bush and temporary shelters, helicopter pads and passage through bush. A water licence from the Ministry of Environment is required if the usage of water over a one year period, if the holder discharges domestic sewage in excess of 22.7 m; per day. Amounts less than that require a septic system. It may also be necessary to do an archaeological impact

assessment if cultural heritage areas are within the location (this is determined by the district inspector). Workers Compensation First Aid Regulations also apply. Under the Mineral Exploration Code there are no work obligations on a coal licence. The licence is maintained by payment of an annual rental of:
Year 1-5: $7 per hectare; Year 6-10: $10 per hectare; Year 11-15: $15 per hectare; each succeeding five year period: $5 increments.

The size is of the location is 1600 meters square, unless the area held is less than 256 hectares. There is no limitation on the number of locations that can be held.
To obtain a licence under the Coal Act, the applicant must enclose a fee, rental, a plan and description of the area and any further information required to evaluate the application. Once the application and documentation is received, the Minister will issue the licence, valid for 1 year and renewable for one year terms as long as compliance is maintained with the conditions.

To obtain a permit under the Mines Act, the applicant must give a Notice of Work and Reclamation in which the exploration and location are explained. This is submitted to the District Inspector who circulates it to relevant Ministries (Environment, Health), to First Nations within the proposed area, and other who he decides should have the ability to review and comment. The permit must be issued within 45 days unless the application is deficient or if more time is required. The approved Permit may have terms and conditions which address concerns raised during the review.

In addition, the applicant must deposit a reclamation security which is a cash or financial instrument to cover the costs of reclaiming the exploration site. The district inspector may change the amount if in his opinion the costs would be higher or if there is a contingency amount required to cover a risk the applicant did not recognise. The amount can be less if the applicant has a past record of timely and successful reclamation at other sites.

Any licence holder who wishes to develop and produce coal, requires a coal lease under the Coal Act. The application requires the fee ($1000), rental (as above) and a plan of operations which includes feasibility studies, environmental assessment plan as well as other plans connected with the mining project. The issuance of a coal lease is relatively simple as long as the applicant complies with the regulations. The Minister issues the lease after which the holder must comply with all the other relevant requirements such as feasibility, environmental and other submissions. The term of the lease is 30 years (or the period requested by the applicant if less) and renewals of 15 years are automatic as long as the terms of the lease have been complied with.

At both the permit and lease issuance stages, a reclamation plan is required. The Mines Act requires the posting of a money or financial instrument security. The Act allows for the option of setting up a reclamation fund, which is established by regulations. The money received from the owner or agent must be paid into a separate account in the name of the specific mine. The Minister may requisition payments from the account:

- To refund money and interest earned to the mine if the chief inspector believes it is no longer required for mine reclamation and land, or protection of and mitigation of damage to, watercourses affected by the mine.
- To pay for work required if the mine has not performed the reclamation or complied with conditions.

The lease application is subject to review under the Environmental Assessment Act. British Columbia has many active environmental pressure groups and as a result, environmental review is detailed process. Any new coal mine with 100,000 tonnes of clean and/or raw coal (coal which is transported from a coal mine without being processed in a coal preparation plant), or any existing (reviewable) mine entailing either a 35% increase in the area of mining disturbance or 250 hectares of new disturbance, are within the purview of the Act and the review process.

The process provides for a review of environmental, economic, social, heritage, cultural, and health effects of the project. There are several stages to the complicated process:

- Application: a project Committee is established consisting of government representatives and First Nations. The application is circulated to government agencies, First Nations, and the public for review. (30-75 days). The Project Committee makes recommendations to the Executive Director. A decision is made as to whether further review is necessary. Alternatively he can submit to the Minister of Environment and Minister of Energy asking them to approve, reject or require a project report. If the latter, the next stage is
- Project Report: The Project Committee prepares draft report specifications. These are circulated to government agencies, First Nations and the public. (15-30 day review). The proponent than prepares and submits a project report in accordance with the specifications. It is reviewed by the project Committee and Environmental Assessment Office then circulated to government, First Nations, and the public. There is a 45-60 day review period after which the Project Committee makes recommendations to the Executive Director. This is referred to the two Ministers who decide whether to certify or reject the project or require a public hearing. If the latter, the next stage is
- Public Hearing: Draft terms of reference are prepared by the Ministers and filed for public comments. After considering public comment, final TORs are issued and the Environmental Assessment Board is directed to undertake a public hearing on the applications and any licences and permits which are required. The Environmental Assessment Board holds a public hearing and submits a report with recommendations to Cabinet. Cabinet decides whether to issue the approval certificate, subject to any conditions, or order a refusal.
  There are provisions which allow a proponent to apply for concurrent regulatory approvals. These do not apply to coal mine hearings.

4.0 Fiscal Framework

The tax and fiscal framework affecting mine operations in Canada is complicated as both the federal and provincial jurisdictions have taxing powers. The federal government has the power to tax on both personal and corporate income. Provincial income tax legislation does exist but payments are established as a percentage of the federal income tax payable. It is in the area of taxation where the federal government makes a major contribution to the sustainability of the mining industry through incentive provisions.

Coal mines are taxed like any other operating mine.

4.1 Federal

Canadian federal income tax	38% (minus 10% provincial abatement before taxes) = **28%**
Federal Surtax	4% of federal tax
Large Corporations Tax	.225% of taxable capital (debt and equity less allowance for investments and a $10 million exemption)

Non-Revenue-Related: 7% Goods and Services Tax

4.2 Main Federal Incentive Provisions:

Canadian Exploration Expense (CEE): deduction of 100% of the costs incurred prior to production that are both exploration and development expenses.

Canadian Development Expense (CDE): deduction of 30% of the costs of acquiring a property on a declining-balance basis.

Canadian Exploration and Development Overhead Expenses: indirect costs included in CEE and CDE for a year when they are related to these activities. Generally includes deductions for administrative, management and financing costs, allocated salaries of employees where less than 90% of their duties were for exploration and development, costs (rent) of properties used less than 90% for exploration and development; profit element of payments to certain affiliates for rental properties, service fees, various purchase.

Capital Cost Allowance (CAA): 25% deduction on a declining-balance basis of the costs of buildings, mining machinery and equipment, assets for processing output to prime metal stage or equivalent, social assets related to a mine site, railways related to a mine site, electrical plants related to a mine, and equipment used for exploration purposes

Capitalised Interest Costs: interest expense is claimed as a deduction in the year it relates and the costs to raise financing are deductible over a five year period.

Earned Depletion and Mining Exploration Depletion Allowances: Earned depletion is claimed to the extent of 25% of resource income after all applicable deductions and before claims for loss carry forward. Mining exploration depletion allowances is 25% of any income after all other deductions, other than claims for loss carry forward.

Resource Allowance: 25% of certain adjusted resource profits, including a share of income or loss allocated from a partnership. The starting point is net income for tax purposes. Also allows for a "resource loss"

Federal Investment Tax Credits: 20% of expenditures on scientific research and experimental development

Reclamation Costs: deductible if contributions are made to a "qualifying" environmental trust to fund future liabilities if required under federal or provincial law. Amounts received from the fund are taxable but the trust itself is exempt from federal income tax.

4.3 Alberta

Revenue Related Tax

Crown Royalties	
Sub-bituminous	$.055 per tonne
Bituminous	1% of mine mouth (gross) revenue plus 13% of net revenue

Non-Revenue Related Tax

Provincial Sales Tax	0%
Capital Tax	0%
Coal Lease per hectare	$3.50
Fuel Tax per litre	
Gasoline	$0.09
Diesel	$0.09

4.4 British Columbia

Revenue Related Taxes

Income Tax	16.5%
Mineral Tax	13% of net revenue plus 2% on the "net current proceeds"

Incentive Provisions:

Mining Exploration Tax Credit: 20% of eligible exploration expenses

Non-Revenue Related Taxes

Provincial Sales Tax	7%
Capital Tax (total paid up capital includes shareholders' equity, debt and reserves such as deferred income taxes)	0.3%
Coal lease per hectare	$10
Fuel Tax per litre	
Gasoline	$0.11
Net off Road	$0.11
Diesel	$0.03

5. Institutional Arrangements

5.1 Alberta

The Ministry of Energy is responsible for Alberta's oil, gas, oil sands, hydro generation, coal, electricity and mineral resources. The mandate of the Ministry encompasses two distinct organisations - the Alberta Department of Energy (Department) and the Alberta Energy and Utilities Board (AEUB).

The Ministry has a Business Plan which sets core business goals for the Department and AEUB. Each has to report each year on the goals, their performance and results obtained.

The Ministry has a Minister who is an elected Member of the provincial assembly and member of the Executive Council (Cabinet) and a Deputy Minister, the senior public servant in the Department, responsible for the overall operation of the Department. There are six entities making up the Department: the Divisions of Corporate Services, Minerals Operations, and Planning Development. each headed by an Assistant Deputy Minister; Electricity Branch and Internal Audit Branch each with an Executive Director; and a Communications Branch, headed by a Director. The Mineral Operations Division is responsible for administration of Mineral Rights and Mineral Revenues.

The AEUB is the regulatory agency responsible for the administration of coal mining and is also a quasi-judicial body in context of hearings. It has five members appointed by Government for five year terms. The appointees cannot have any monetary interest of any description, directly or indirectly in any oil, gas, oil sands, coal or hydro energy property or any business engaged in any phase of oil, gas, crude bitumen, coal or electrical energy industry or be engaged in any phase of business of generation, transportation, distribution or sale of energy in any form.

The administrative system set up in Alberta gives little, if any, discretion within its mandate. Decisions are made according to criteria set in the legislation and regulations and final decisions are made by the AEUB, an independent body. The decision-making system is therefore based upon objective, transparent terms, which ensures the lack of political interference in the on-going life of the minerals industry.

5.2 British Columbia

The Government of British Columbia has reorganised its administration of the minerals sector several times in the past few years. The Ministry of Energy and Mines now administers the sector. In the Ministry, an Energy and Minerals Division comprised of Petroleum Lands Branch, Mineral Titles Branch, Geological Survey Branch and Mines Branch, is directly responsible for the Government's day to day management. The Mines Branch oversees mine health and safety, mine permitting, and six regional offices. The regional offices issue permits for all mining and mineral exploration activity within the Province. They also monitor health and safety through inspections and audit, enforce compliance with legislation and investigate accidents or dangerous occurrences.

British Columbia has also set up a system whereby the management of the sector is open and transparent and limited discretion in decision-making.

6. Stakeholders

6.1 Companies

The companies mining coal in British Columbia and Alberta are private sector.

6.2 Consumers

There are three major consumers of coal in Canada - electrical utilities, steel plants and cement manufacturing. The ownership of electrical utilities in Canada is a mix of privately owned and publicly owned. De-regulation of the electricity industry is forcing privatisation of the government-owned utilities and over the next few years, the electricity utilities will be privately owned.

6.3 Transporters

Coal is moved by rail in Canada. Most coal is transported to the west coast for export by ship. The average distance from mine to export port is 1100-1200 kilometres. One million tonnes are moved to the Great Lakes and moved by laker to areas in Central Canada. There are two rail companies in Canada - Canadian National and Canadian Pacific - both private sector companies. However, their rail and service lines are such that mines are generally only serviced by one or the other. The movement of coal is a large part of their business and co-operation between the mining companies and railways has been excellent. While it is difficult to get exact figures on the transport cost in the coal price, estimates have it as approximately 30-40% of the coal price F.O.B Vancouver. Mining companies have overcome this transportation cost disadvantage by driving down the costs of mining, mainly by using high tech methodologies and systems. The railways are increasingly using leading edge dispatch systems to manage their fleets and commodity movements.

Ports have become more private-sector managed and are now more likely to make decisions which are positive to port users. However, federal changes to ports administration are causing some concern to producers as the proposed fees and charges are not conducive to keeping export costs down. Numerous submissions have been made to the federal government regarding this issue and a final decision remains to be made.

6.4 Producers' Associations

The mining industry is well organised in Canada. There are a number of organisations which represent the coal industry.

The Coal Association of Canada is the largest of these organisations and represents the industry to government on major issues. It also is responsible for the dissemination and provision of information to the public.

Others are the Canadian Mining and Metallurgy Association (CMMA), Mining Association of Canada, and Mining Associations in each of the Provinces.

6.5 Unions

Most mines are unionised in Canada. Although this is the case, there are relatively few major labour disruptions. Labour relations legislation exists in each province whereby unions are certified through voting processes. Under the legislation, labour relations boards can mediate in disputes between owners and the labour force. Coal mines require highly skilled workers and in Canada the average annual wage is $73,000. Pension, medical and other benefits are also excellent.

6.6 Local Communities

Most coal mines are located in rural, remote areas. The sustainability of rural environments is important to governments. As stated above, those working in the coal mines are high wage earners. They are important to the local economies and standard of living in these rural areas. Governments recognize that the coal industry is essential to the maintenance of these rural communities and to the general economy.

7. Other

7.1 Coal Pricing

There is no regulation of coal prices in Canada. Price is set by the competitive market. In situations where there are coal mines owned or nearby electrical utility plants, the price is set in a variety of ways:

- Where the power company owns the coal resources and contract a mining company to mine the coal: the power company buys equipment and the mining contractor operates it. The contract mining price is negotiated every approximately every five years based on actual costs, with escalation clauses.
- Where the mining company has a contract to deliver coal: The mine advises the power company the quantity of coal from each lease (which are owned by different companies) and the power company allows adjustments of the coal price depending upon the royalty paid to the owner of the leases. These vary significantly but the mine receives a constant price for coal with the royalty adjustment dealt with separately.
- Where the mine owns and operates the equipment and has leases to the coal it mines: The mine negotiates the price of coal with the power utility. The price

would be based on agreed costs plus profit. If the mine can become more efficient during the term of the contract it can increase its profit.

This is a complicated area and one where there is little information due to the confidentiality of contract between the mines and power utilities. Each contract is different depending upon the particular situation. Negotiated prices have to be fair and generally arm's length because of transfer pricing provisions in the federal income tax law.

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CHINA

1.0 Sector Background

Coal mining in China has a long history, dating back more than a millennium. The modern era can be considered to have started in the late 19th century as the major European powers, and later the Japanese, set up mining operations in China. However coal mining became more important after the People's Republic of China was formed in 1949. China is now the largest coal producer in the world.

China's total coal reserves are estimated to be 5.3 trillion mt, 64% of which is located in the northwest. Only 7% of total reserves, 70% of which is lignite, is considered surface mineable, which is why underground production accounts for 96% of overall production and surface mining only 4%. Open pit coal mines have to date played a relatively minor role in China.

A licensing system regulating coal dealers is expected to take effect in the middle of this year. China was poised to shut down 25,800 small coal mines and reduce coal output by 250 million tons by the end of 1999. Mines to be shut down are those which have been operating without official approval, those operating on the sites of State-owned mines, and those which have obtained official certificates but are regarded as irrationally planned. There are 51,200 coal mines operating national wide without official approval, with annual production capacity of 430 million tons. These small coal mines play a major role in creating fortunes for local governments. The industry is undertaking self-reform and restructuring to increase productivity along with production, embrace and develop new technology and mining techniques, and drastically reduce coal mining fatalities and environmental damages.

In 1994 there were 618 state-owned coal mines in China, which produced 44% of total production. These mines operate about 2500 longwall faces. There are about 1800 locally run collective mines, which accounted for about 20% of coal production. The remaining 36% is mined from more than 79,000 smaller mines. Mining in non-state-owned mines is virtually unmechanised and production ranges from 5000 to 100,000 tonnes per year.

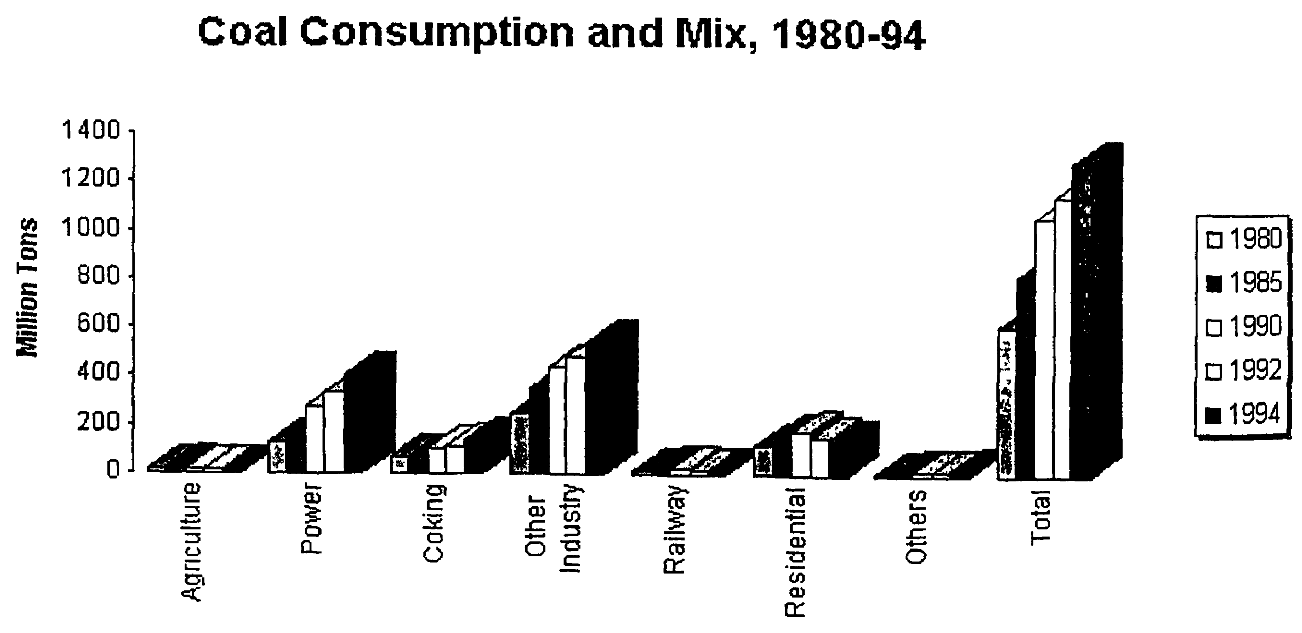
The coal industry is in a state of transition. In 1997, China's coal industry finally put an end to the serious losses of the 1984-96 period, with the key State coal mines earning 200 million yuan (US$24.1 million) in net profits. But in the first three quarters of 1998, the key coal firms reported large deficits resulting from a huge oversupply of coal. Last year, the Central Government placed the large State coal mines under the jurisdiction of provincial governments, aiming to give the provinces greater incentive to shut down small mines.

Table 1 Some Facts of China's Coal Industry

Reserves	
Total reserves	5.6 trillion mt
Proven reserves	566 billion mt
Recoverable reserves	167 billion mt
Production	

Annual production (raw)	1.2 billion mt
Former MCOI production	490 billion mt
Local government production	208 million mt
Collectives/privates prod	512 million mt
Workforce	
Total industry employees	7 million
Former MCOI total employees	5 million
Former MCOI production employee	3.5 million
Local government employee	1.3 million
Collectives/private employee	2.2 million
Mining methods	
MOCI longwall faces	1,499
Fully-mechanised	243
Semi-mechanised	394
Conventional	840
Other methods (hydraulic. etc)	22
Preparation plants	210
Plant throughput	240 million mtpy (ROM)

Figure 1 Coal Consumption in China



China's coal production was 622 million tons in 1988 and reached 1.236 billion tons in 1998. and in 1999 should be limited to 1.1. billion tons according to the State Coal Industry Bureau (SCIB).

Total employment in the industry, which includes all diversified portions as well as coal mines, exceeds 7 million people. Of these, 3.5 million under local government-controlled coal enterprises, and an estimated 2.2 million in the collectively and privately owned sector. It is estimated that the mine-closure programme will cause at least one million workers to lose their jobs in the small coal mines.

As with all natural resources, the coal reserves are owned by the Central Government, which receives royalties or taxes on the coal produced (17 to 13% of sales for MOCI-controlled mines). The taxes are collected by the Provincial governments and the reallocated throughout the country via local authorities. Royalties are collected through two taxes specific to mining, the Resource Tax and the Mineral Resource Compensation Fee. For coal production, the resource tax - which can be regarded as a resource rent - is levied at a rate between 0.3 Yuan and 5.0/t (US $0.04 -0.60/t). To this is added a sales value component, the mineral resources compensation fee, which for hard coal is calculated as 1% of the annual sales revenue, adjusted by a 'mining recovery rate coefficient'. This factors the variance between actual output and the approved mine design capacity.

1.1 The Basic Legal Framework

Laws and Regulations

China has promulgated a number of laws, rules and regulations which comprise the basic legal framework for the coal mining industry:

- Coal Law of the PRC (29th August 1996, effective 1 December 1996)
- Mineral Resources Law of the PRC (amended on August 29, 1996 and effective Jan 1 1997)
- Mine Safety Law of the PRC (effective May 1, 1993)
- Interim Measures on Registration of Exploration and Mineral Resources (promulgated on April 29, 1987, now under revision)
- Interim Measures on Registration of Mining Operations of State-Owned Mine Enterprises (promulgated on April 29, 1987, now being revised as the regulations on Mining Rights Management).
- Interim Measures on Supervision and Management of Mineral Resources (promulgated on April 29, 1987, now being revised)
- Implementation Rules for the Mineral Resources Law of the PRC (effective March 26, 1994, now under revision)
- Implementation Rules for the Coal Law of the PRC promulgated by the National People's Congress at different provinces/regions
- Mine Safety Regulations (effective 1st January 1993)

This legal framework allows of foreign investment in the exploration and extraction of China's mineral resources; and safeguards the interests of foreign investors involved in China's mineral sector; and defines the legal status of the country's privately owned and foreign mining companies.

The Mineral Resources Law applies to all 'exploration and exploitation of mineral resources' in China. It states in the 'Implementing Rules' that the State permits foreign companies, enterprises and other economic organisations, as well as individuals, to invest in the exploration for and exploitation of mineral resources in China.

Some of the key features of Mineral Resources Law are:

- the State owns all mineral resources
- registration and licensing are required for all exploration and mining ventures
- exploration or extraction of mineral resources may occur only within the licence-designated area and within designated time limits
- once granted, exploration and extraction rights will be protected by the State
- State-owned mining enterprises will remain the principal force in PRC mining
- mining activities are subject to resource taxes and mineral resource royalty fees
- exploration programs and mining projects must comply with State prescribed technical specifications and regulations
- approval to operate a mine is given on the basis of an approved development report, mine design, production technique and environmental protection measures
- approval from the authorities is required to close a mine
- penalties for violating the law include criminal prosecution

Important changes introduced into the new Mineral Resources Law for the first time include the following:

1. Transfer of rights

In an effort to introduce market mechanisms to the mining industry, exploration and extraction rights can now be transferred to other parties (including foreign parties) in specific circumstances. Transfers are now permitted where:

(a) the holder of an exploration licence has completed a stipulated minimum exploration expenditure in its designated exploration area; or

(b) the holder of the mining rights requires a change of ownership as a result of a merger or restructuring or because it has entered into an equity or co-operative joint venture, or it plans to sell its enterprise assets or otherwise alter the asset ownership.

The basic principles regarding the transfer of ownership rights set out in the Law are quite general, and it remains unclear to what extent State-owned mining companies will be able to contribute mining rights to a joint venture, pledge mining licences as security, lease the rights to others, transfer rights upon insolvency, etc

2. Approvals and Registration

In an effort to curb unregulated and illegal mining activity, the Law requires that anyone wishing to explore for or to mine mineral resources must obtain appropriate regulatory approvals, must be registered with the MGMR and must meet certain (unspecified) conditions of qualification. A foreign company will require approvals from several different ministries and departments in order to commence an exploration or mining program.

The holder of an exploration licence has the right to carry out exploration activities within the designated area and has the "privileged priority" to obtain the right to mine the mineral resources in the exploration area. While the concept of "privileged priority" is not defined, it is understood that MGMR interprets this concept to mean that the holder of the exploration licence receives the first and exclusive right to exploit any discoveries in the area covered by the holder's exploration licence.

3. Fees and Taxes

Mining enterprises given the right to explore for mineral resources must pay compensation to the State to maintain those rights. Mining operations must pay a mineral resource compensation payment at stipulated rates levied as a set proportion of sales revenue derived from mineral products. Separate legislation in force since 1994 provides that mining operations must pay a resources tax on extracted mineral products.

4. Title Registration

The new Law provides that certain large value or large scale mining projects must be approved by the central government authorities. Medium and smaller scale projects can be approved at the Provincial level. Once an exploration or mining licence has been issued by the relevant authority, the approval will be submitted to the MGMR for recording.

In this way, China is establishing a unified national system for mining title registration which will bring welcome certainty to the title registration and due diligence process.

5. Joint Venture Arrangements

Two of the most important PRC laws for foreign investors in China's mining sector are the "Law on Equity Joint Ventures" and the "Law on Co-operative Joint Ventures", which govern the structure of foreign investments.

A Chinese mining project involving foreign investors generally begins with the signing of a memorandum of understanding, letter of intent or a co-operation agreement between the foreign party and the Chinese partner relating to a specific mining or exploration project. The foreign investor and the Chinese party (which is usually a government entity) then negotiate either an equity joint venture or a co-operative joint venture agreement to create a legally binding relationship.

In a typical Chinese mining joint venture, a foreign mining company will generally have operational responsibility and clear control over all technical aspects of the project, will negotiate to earn a majority interest in the mining project, or a priority return of capital, by funding exploration and development work and providing technical expertise. The Chinese party will typically provide the mining resource property, the necessary permits, labour force, existing technical data and the ever-important "relationships" with the regulatory authorities. Assets contributed by the Chinese party will have to be independently valued, and the foreign party will usually contract to earn its equity interest by investing a prescribed amount in the project.

In 1997, the “Peoples Republic of China Coal Law", its first comprehensive legislation governing the coal industry came into force. The Coal Law contains further conditions specific to proposals for coal mining. An application for the establishment of a coal mining enterprise has to be approved by the relevant administration department, while technical proposals are subject to review by the geology and mineral resources authority.

Foreign Investment Requirements/Incentives

A flurry of new legislation has been introduced in China during the last fifteen years. Legislation relating to foreign investment has been influenced by a number of factors including:

- China's attempts to gain entry into the World Trade Organisation (WTO);
- The passage of various Memorandums of Understanding between China and the United States;
- China's efforts to maintain Most Favoured Nation (MFN) status with the United States.

The new laws and regulations have improved the investment prospects in China significantly.

China began implementing its open-door policy in 1979. By 1997, the Chinese government had promulgated more than 250 laws and regulations concerning external economic relations. They covered foreign trade, joint venture enterprises, taxation, technology transfers, and special economic zones and open cities.

Several other laws and regulations are now being formulated. They may directly or indirectly affect minerals and energy exploration and development, including corporation and bankruptcy laws. International investors must comply with China's laws and regulations in the undertaking of exploration and exploitation of mineral resources (including coal) in the country.

The primary laws and regulations pertaining to foreign investment in the Chinese minerals sector include:

- General foreign investment laws and regulations on import and export duties and regulations on foreign exchange control
- Specific laws and regulations applicable to the minerals industry, such as the amended 1986 Mineral Resources Law of the PRC, regulations on mineral-titles management, regulations on mineral royalties and regulations on resources tax.
- Natural resource laws relating to the mineral industry, land management, regulations on the grant and transfer of land-use rights, forestry, environmental protection and mine safety.
- Coal Law
- Tax laws and regulations that are applicable to the minerals industry.

Six mining tax laws and regulations were adopted in late 1993 in China and became effective Jan. 1994 as part of the overhaul of the country's taxation regime. These included the enterprise income tax law; the individual income tax law; regulations on value added tax (VAT); regulations on a consumption tax; regulations on a business tax and regulations on a resource tax.

The enterprise income tax law of 1994 applies only to domestic enterprises. However, the income tax law of the PRC for enterprises with foreign investment and foreign enterprises promulgated on April 9, 1991 applies to mining enterprises using foreign capital.

China's income tax rate if 33%. Of that, the local income tax is 3%, the same as that for domestic firms.

Other laws and regulations pertaining to taxation include Regulations of the PRC on Import and Export Duties, Regulations on Collection and Management of Mineral Resources Compensation (royalty),. Provisions Concerning the Payment of Royalties for the Exploitation of Offshore Petroleum Resources, and Interim Provisions Concerning the Payment of Royalties for Chinese-Foreign Co-operative Exploitation of Petroleum Resources and Land.

1.2 The Fiscal Framework

Taxes on corporate income

Taxable entities: All foreign enterprises with an establishment or a place in China and investment enterprises, i.e., equity joint ventures (EJVs), co-operative joint ventures (CJVs) and wholly foreign-owned enterprises (WFOEs), are subject to tax at 30%.
Local surtax: In addition, a local surtax of 3% of the taxable income is assessed. For investment enterprises, this local surtax may be waived.

Corporate residence

Foreign enterprises are taxed on profits earned from trade or business activities carried out through a permanent establishment or place of business in China. Investment enterprises, as Chinese-incorporated companies, are taxed on their world-wide income. Foreign enterprises that do not have permanent establishments in China but derive certain China-source income are subject to withholding tax.

Branch income

A branch will be taxed under the normal provisions of the Income Tax Law.

Deductions

Depreciation:

Fixed assets with useful lives of two years or less and items that cost RMB2,000 or less can be expensed. Other fixed assets must be capitalised and depreciated in accordance with the income tax regulations. Depreciation is calculated by the straight-line method. Under special circumstances, an application may be made to the Tax authorities to use accelerated methods of depreciation. Under the straight-line method, cost less salvage value is depreciated over the useful lives of the assets. Salvage value is estimated at 10% of cost under the regulations. The regulations provide minimum useful lives for the following assets.

Net operating losses:

Operating losses can be carried forward for a period of no longer than five years.

Payments to foreign affiliates:

Royalties and interest charges paid by an investment enterprise to foreign affiliates are tax deductible, provided the amounts do not exceed those normally derived from an arm's-length transaction. A management fee paid to a foreign affiliate may not be deductible.

Head office expenses:

- A deduction can be claimed by a foreign enterprise with an establishment or a place of business for administrative expenses allocated by the head office, provided a report documenting the total amount, categories of expenses and allocation basis and an audited statement of head office expenses is submitted.

Amortisation of intangible assets:
A deduction is allowed for amortisation of intangible assets, such as patents, proprietary technology, trademarks, copyrights, the right to the use of sites, and other intangibles. Intangible assets that are counted as investment by a foreign enterprise with a provision for time limit of use should be amortised according to the time limit. Those not subject to such provisions are to be amortised over a period of not less than ten years. Organisation expenses incurred during the preparation period can be amortised over a period of not less than five years.

Taxes:
Income tax and local surtax charges are non-deductible items in determining an enterprise's taxable income. Other taxes, such as irrecoverable value-added tax, business tax, consumption/excise tax, real estate tax, and property gains tax, are deductible in calculating net taxable income.

Group taxation
Group taxation is not permitted. However, a combination of profits and losses for different projects/activities of a single legal entity is permitted in a single tax return.

Tax incentives
Inward investment:
Investment enterprises of a production nature that expect to operate in China for ten years or more can apply for an exemption from income tax for two years, beginning with the first profit-making year, and a 50% tax reduction in the following three years. A range of other reductions and exemptions is available, subject to certain criteria.

Regional investment:
A reduced income tax rate of 15% may be possible for productive investment enterprises in the Economic and Technological Development Zones and for enterprises engaged in production or business operations in the Special Economic Zones. A tax rate of 24% is possible for productive investment enterprises located in the different economic open zones, depending on the location of the project.

Reinvestment of profits:
Where a foreign investor of an enterprise reinvests its share of profit, it may obtain a tax rebate of 40% of the income tax paid by the enterprise if the income is reinvested for a period of at least five years. The reinvestment must be either in the original venture by increasing its registered capital or in another investment enterprise. If the foreign investor reinvests its profits in an export-oriented or technologically advanced enterprise for a period of at least five years, the investor may receive a full refund of the income tax already paid on the reinvested amount.

Withholding taxes
No withholding tax is levied on business profits remitted overseas as dividends to foreign investors by investment enterprises.

Corporations resident in non-treaty countries:

Foreign enterprises without establishments in China will be subject to a withholding tax of 20% on gross income from dividends (see exception above for dividends from investment enterprises), interest, lease of property, royalties, and other China-source non-business income, with the following exceptions.

- Exemption from withholding tax on interest income may be available under certain criteria if proper approval is obtained.
- Withholding tax on proprietary technology usage fees may be reduced to 10%, or the fees may be exempt in certain cases, subject to approval.
- From August 1, 1993 a temporary exemption from withholding tax applies to dividends/gains generated from PRC B shares and H shares.

Other taxes

***Turnover taxes*:**

On January 1, 1994 the PRC introduced a new turnover tax system, consisting of three taxes—value-added tax (VAT), business tax and consumption/excise tax, to replace CICT. Under the new system, the sale or importation of goods and the provision of repairs and goods processing services are subject to VAT. Other services provided in the PRC and the transfer of real property and intangible assets are subject to business tax.

VAT is charged at a standard rate of 17%. The sale of certain necessity goods and the importation of certain special equipment could be exempt from VAT or be subject to VAT at a reduced rate of 13%, as specified in the VAT regulations. Exports of investment enterprises established before January 1, 1994 are exempt from VAT. Exports of investment enterprises established after December 31, 1993 are zero-rated. However, the VAT input refund rate for these exports has been reduced. For goods subject to VAT at a rate of 17% the VAT refund rate is reduced to 14% (effective July 1, 1995) and 9% (effective January 1, 1996). For goods subject to VAT at a rate of 13% the VAT refund rate is reduced to 10% (effective July 1, 1995) and 6% (effective January 1, 1996).

Business tax rates range from 3% to 5% except for the leisure and entertainment industry, which may attract a rate of up to 20%.

Consumption/excise tax was also introduced to tax 11 categories of goods, including cigarettes, alcoholic beverages and certain luxury items.

VAT is typically a recoverable tax, whereas business tax and consumption/excise tax are not recoverable.

***Five-year grandfather rule for investment enterprises*:**

Where the amount of turnover taxes borne by an investment enterprise established prior to January 1, 1994 exceeds the tax it would have borne under the old turnover tax regime, the excess is refundable for five years under a grandfather rule. The five-year grandfather period is from January 1, 1994 to December 31, 1998.

***Real estate tax*:**

A real estate tax is assessed on land and buildings according to the standard value on the basis of a general market evaluation.

Real property gains tax:
A tax on gains generated from the disposal of real property is imposed in addition to income tax or withholding tax. The tax rates range from 30% to 60%, depending on the size of the gain.

Tax incentives in Special Economic Zones

Preferential tax treatment available to both foreign enterprises and investment enterprises operating in these areas includes the following.

- The income tax rate is reduced to 15%.
- Local surtax may be reduced or exempted through application to the local governments.
- The withholding tax on gross income from dividends, interest, lease of properties, royalties, and other China-source non-business income is reduced to 10%.

Tariffs

After the 15th National Party Congress in September 1997, China announced that it will cut various import duties and tariffs from 1 October 1997. The average tariff rate will drop from 23% to 17% affecting more than 4,800 types of products. This is about 73% of all the commodities on which China poses a tariff. Quite clearly this is an effort to gain entry to the World Trade Organisation, and follows on from recent discussions with Japan about China's level of tariff protection.

Deed Tax

In China, organisations and individuals are required to pay a "deed tax" on documents relating to transfer of PRC land and the ownership of buildings. The rate of deed tax will increase from 3% to 5% of the tax base. The new regulations came into effect from 1 October 1997. "Deed tax" must be paid 10 days after signing the contract or obtaining the documents showing the transaction is legally ineffective.

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COLOMBIA

1.0 Introduction

Colombia is a democratic republic which has had a stable economic growth rate of 4-5% over recent years. However, politically the country can be turbulent and extraordinary violent. The government is struggling with the country's endemic corruption, terrorism and crime which is mostly linked to the drugs trade. Illegal payment and protection policies exist and are controlled by local guerrilla groups.

The country's efforts to expand its coal mining sector continue to be adversely affected by security concerns. Mine facilities and personnel are frequently the target of terrorist attacks, mine explosives are frequently stolen. The whole of Colombia continues to be plagued by incidents of terrorist violence from guerrillas, paramilitary and drug trafficking organisations. Many of these incidents exist in the rural areas, which also happen to be where most exploration and mining is carried out.

The government has recognised that these problems must be overcome if the mining industry is to modernise and compete on the world markets. Therefore, the government has embarked on a policy of repression against traffickers, regardless of the risk of violent backlash. However, it is difficult to determine whether the government is succeeding in their fight against these social problems. The war against drugs has had a significant effect on Colombian coal exploration and mining. Furthermore, this dissuades national and foreign investors. However, the country now faces weak prices for coal due to over-supply and a reduction in demand.

1.1 The 1991 Economic Liberisation (La Constitucion Politica de Colombia) and De-Regulation of Mining

Historically, Colombia like most of its Latin American neighbours operated economic protection policies. However, in 1991 economic liberalisation was introduced. This new Political Constitution, adopted by the National Constitutional Assembly, introduced structural changes to the institutional framework of economic and commercial activity. This economic and commercial liberalisation in led to the opening of the economy and a relative reduction in business corruption. This new system abolished the legal restrictions that hindered foreign investment and prevented the exploration and exploitation of coal.

Colombia has an asset most of its continental neighbours do not: money. Under the 1991 constitution internal funds became available to foreign mining companies so they do not need to finance exploration and mining projects from external sources.

As a result of the 1991 political reform, imports grew rapidly, trade procedures were simplified, foreign exchange controls and regulations were lifted. The Central Bank's monopoly on mineral purchases was eliminated, assets tax were abolished, import duties were reduced from around 30 to 5% and privatisation opened up the coal sector for foreign investments. This political climate encouraged foreign investment in the opencast coal mining industry and attracted international finance for the development of coal in northern Colombia.

As part of its commitment to restructure the coal mining industry, the Columbian Government commenced the development of the "El Plan Nacional de Racionalizacion de la Mineria del Carbon," which has not yet been finalised. Its overall objective is to modernise the coal mining industry and improve its efficiency. At present, a program of rationalisation is in the planning stages, being driven by the Colombian government and industry. Ecocarbon will lead the rationalisation process by virtue of its authority and multiple functions.

To justify the rationalisation of the coal mining industry, it is desirable for the Colombian Government and the mining industry, to obtain the following:

- Greater profits through good business organisation (by export and internal consumption),
- Develop a competitive cost structure.
- Improve terms and conditions of work in regard to health, safety and economy.
- Conservation and management of the coal reserves.
- Reduction of the impact on the environment in terms of pollution, contamination and geological hazards.

The 1991 constitution and economic liberalisation grants the state ownership of coal resources, and the obligation to promote exploration and exploitation in acceptable environmental terms. The Mining Development Plan has identified the priorities for revitalising the mining sector. These activities will be financed mainly by the National Royalty Fund (FNR) most of which will come from coal and oil exploration and production.

Within the Mining Development Plan, foreign exchange laws guarantee equal treatment to national and foreign investors, enabling them to invest in all economic sectors except national security, defence and toxic waste disposal. These laws allow free remittance of profit and capital by foreign investors and ensures that no additional negative modifications to exchange guarantees shall occur after the time of investment. Foreign investment is also protected by international treaties.

The Foreign Trade Bank (Banco de Comercio Exterior), which is expected to provide better availability of export credits on a more timely and less complicated basis, was formed in 1992. This bank will grant financial assistance to export-oriented activities and promote them.

Capital was borrowed by the Colombian Government from international lending institutions such as the World Bank. However, the terms of these loans imposed restraining conditions on the management of the coal mining industry. This made it necessary for the Colombian Government to impose taxes, royalties and maintain partial share of any developments in the coal sector. This has been a factor that has tended to hinder foreign investment.

2.0 Overview of the Coal Sector in Columbia

Coal mining in Colombia dates back to the 1800s. The first mines were small opencast and underground operations that produced steam coal to support pig iron foundries, for the processing of iron. Around 1900, the construction of railroads increased the demands for coal and many of the steam engines were converted from wood burning to coal. Additional demand for coal came from the brewing, textile and cement industries. Expansion of cement manufacturing, power utilities, paper mills and other industries increased the demand for coal during the latter part of the century.

Colombia has the largest coal reserves in Latin America and is in a privileged geographical position, close to the world markets. Most of the reserves are only 350 km from their export terminals. Proven reserves, evaluated from only 7 of the country's 35 known deposits are 6648 million tonnes tonnes. Possible reserves are 2597 million tonnes and unproven reserves are 4000 million tonnes.

In 1985, Colombia set itself the target to supply 10% of the world's demand for coal and to export 40 million tonnes of coal per annum by 2002. However, to reach higher export volumes, the country needs to invest heavily in additional infrastructure, mainly by rail-roads and port facilities.

Colombia is the one of the world's largest exporters of coal. Coal is the third most important export commodity in Colombia after oil and coffee. The major markets for Colombian coal are the United Kingdom and Eastern European countries, where mining has declined in recent years. The main destination for steam coal is Europe, which takes 75% of the Colombian export. The United States purchases about 20% and the remainder is shipped to other parts of Latin America and the Caribbean (4%) and the Far East (1%).

Overall coal production in Colombia has undergone a rapid increase in the past few decades. In 1990, total production was five times that of 1980, and mining share of the Gross Domestic Product (GDP) rose over the same period from 1-5%.

El Cerrejon Norte is one of the world's largest open-pit coal mines, and contains at least 1 billion tons of reserves. The mine is operated by International Resources Colombia Corp (Interior), which is owned by Exxon and Carbocol (50% each). The company produced 18 Mt/yr and intends to boost production to 23 Mt/yr. The coal is transported by rail to Puerto Bolivar for export. Another major project, La Loma, opened in 1996. It is operated by the US company, Drummond. It produced 6Mt in 1997.

2.2 Type of Coal

Approximately 95% of Columbia's coal deposits are of high quality bituminous coal (8% of which is coking quality). The remaining 5% of the country's reserves contain sub-bituminous coal. No deposits of lignite have been identified. The coal is relatively clean-burning, with low sulphur and ash content, making it highly marketable.

2.3 Opencast and Underground Mining in Columbia

In northern Colombia, large-scale opencast coal mining has been operational since the 1970s. However, the largest reserves occur at El Cerrejon, the world's largest opencast mine. Other deposits occur in Gujira (exploited by Exxon and Carbocol) and La Loma in Cesar., which it is anticipated will produce 10 million tonnes of per annum in the short-term future, mainly for export to the USA. It is anticipated that by 2000, both of these mines will increase coal production in Colombia to 40 Mt/yr

Some 1,880 underground coal mines are reported to be in operation, in contrast to 35 open pits. Underground coal mining is classed as small and medium-scale mining, producing up to 30,000 tonnes per year and 30,000 to 500,000 tonnes per year respectively. Small-scale mining is also distinguished from medium-scale mining by the precarious and often illegal nature of the business.

Some of the small-scale mines are based on a number of families that extract the coal reserves from local mines. Mining is not always continuous, some of the mines are exploited seasonally, the mining may alternate with other activities such as farming and agriculture. The mines are shallow and are easily accessible by drifts and shafts. Precarious mining organisations, usually family based, use simple mining techniques, with no consideration of social costs, environmental implications and safety. This type of mining is a burden on the country, does not contribute to the national economy and potentially sterilises future coal reserves.

In the underground coal mining industry coal is often sold illegally below market prices. This coal is "laundered" through intermediaries, who lack the knowledge and working capital of the mining businessman, and traders obtain easy profit in this activity. Because there are no regulatory costs involved, the coal can be sold cheaply. However, the profits are not reinvested in the mine infrastructure or equipment, making these mines unsafe, and uneconomic. The illegal mining and selling of coal does not contribute to the national income, and is mainly an economic burden for the country.

3.0 The Basic Legal Framework

3.1 Coal Mining Policy and Administration

Colombia's 1991 Constitution grants ownership of coal reserves to the State, except for those for which legal titles were acquired prior to 22 December 1969 (these may be expropriated if they are unexplored for one year). Ecocarbon is the state owned coal mining company charged with regulating and managing government interests in coal .

Coal mining policy and regulations in Colombia are defined by the 1991 Constitution, the National Development Plan (1983-1986), the Mining Code (1988) and (1996). The main objectives are to develop coal exports into a significant source of international revenue, promote the use of thermal coal and stimulate the substitution of coal for hydrocarbons in the industrial, electoral and residential sectors. At the same time, the large opencast coal projects must be promote regional developments, through the payment of royalties and provide financial assistance in socially deprived areas.

Ecocarbon and Carbocol (at El Cerrejon) are charged with promoting the development of new coal projects in association with public or private capital, national and international. The development of the coal resources are undertaken in conjunction with the Department of National Planning and collaboration with the Ministry of Mines and Energy in the development of the technical requirements and legal standing.

The coal reserves in Colombia have been divided into a series of exploration blocks (concessions). Coal deposit licensing is undertaken through an international tendering process.
Alternatively, a concession contract may be agreed between Ecocarbon and the mining company. Some concession contracts have a 30 year duration, after which the installation must be handed over to the Colombian Government in working order.

The Ministry of Mines and Energy has delegated the granting of licenses for coal exploration and exploitation to Ecocarbon. Ecocarbon grants mining titles according to the Mining Code, (Law 80 of 1993, and Board of Directors Agreement 05 of 1994). Exploration and mining licenses are issued to the successful bidder. Ecocarbon open bidding procedures, and make contractual arrangements, directed towards the signing of exploration and exploitation contracts, with national and international clients. The State continues to hold an interest in all coal mining contracts and licenses and defines the legal position and fiscal contribution system. (This is a negative factor for attracting international investments). Exploration licenses are granted for one, two or five years depending upon the size of the concession. However, extensions can be obtained. Exploitation rights automatically follow and are valid for 10 years and an extension for an addition 10 years can be obtained.

The regulations define commercial or industrial contracts for the exploration and exploitation of coal in Colombia. These licenses vary according to the specific agreement. They may define one of the following:

- Production License
- Exploitation License
- Contribution or Concession Contracts
- Association Contracts (e.g. joint ventures)
- Mining operations or services
- Other commercial contracts such as trading, transportation, analysis, procurement, leasing, rentals, commercial representation, consulting or other contracts necessary to best develop the potential for coal production.

With regard to the determination of the national share of total investment, the proponent must submit the draft contract to the Colombian Government for approval. The Ministry of Mines, National Department of Planning and Ecocarbon or Carbocol will derive a formula by which the entire contribution of overseas investors may be registered as equity and permit the remittance of the major part of its profits. Shares, royalties and other compensations are also clearly defined.

Coal projects must finance a proportional share of the cost of associated infrastructure. The infrastructure will be developed in accordance with the interests of national and regional development. Ecocarbon, Carbocol and the Department of National Planning will co-ordinate programmes for road and rail construction, electrification and the provision of physical and social infrastructure.

3.1 The Mining Code

The 1988 Mining Code grants the right to prospect, explore, exploit and develop coal resources.

A license holder of a concession (block), which may be an individual or corporation, must ensure the technical working of the deposit in compliance with environmental protection standards.

The duration of exploration is 2 years for small to medium ranged mining projects and 5 years for large-scale mining. The exploitation term is 10 years for small operations and 30 years for larger ones. Both are subject to extension under the terms of the 1988 Mining Code.

Private individuals or corporations must submit their applications at the Ministry's head office in Bogota or at one of the 5 regional offices located in the major towns in Colombia. For coal, investors must deal with Ecocarbon (the state coal company). Mining administrative procedures are normally fast if the applications are filled in and submitted according to the regulations.

Due to the fact that international investment was slow to start, the government embarked on a policy revision programme in the early 1990's which resulted in the adoption of the 1996 Mining Code. It modifies environmental and ecological aspects and regulations, revises the payment of exploration and involves community participation. It is unclear if the practice of state participation has been discontinued under this new Code.

The duration of licences has also changed. The previous system involved the awarding of 30-year combined exploration and mining licenses, including up to 2 years for exploration, 3 years for construction and the balance for production. The new system uses longer-term contracts.

3.2 Institutional Arrangements

As already noted, Ecocarbon, oversees the legislation and regulatory framework of the coal mining industry under the umbrella of The Ministry of Mines and Energy (Ministerio de Minas y Energia).

3.2.1 The Ministry of Mines and Energy

The Ministry of Mines and Energy is organised into three divisions: Energy, Mining and Hydrocarbons. During the 1990's, the country radically changed its laws and policies and implemented a market economy strategy in the mining and energy sectors. Its institutional structure was modernised and its planning and regulation capabilities were improved, in order to achieve better services for the users, protect the environment and develop rational uses of the mining and energy resources.

The Ministry of Mines and Energy is comprised of the following agencies:

- Ecocarbon; "*Empresa Colombiana de Carbon Ltda*" (Colombian Coal Company Ltd). Regulates and manages the coal, with the exception of the area controlled by Carbocol S. A. (exploration rights for El Cerrejon Norte coal mines)

- Ecopetrol and Ecogas; "*Empresa Colombiana de Petroleos*" (Colombian Petroleum Company and Colombian Gas Company). Regulates and manages oil and gas exploration and exploitation.
- Mineralco; "*Minerales de Colombia S. A.*" (Colombian Mineral Company). Regulates and manages all exploration and exploitation for emeralds, gold, platinum, nickel, phosphatic rocks and other minerals.
- Ingeominas; "*Instituto de Investigaciones en Geociencias, Mineria y Quimica*" (The National Geological Survey).
- Comision de Regulcaion de Energyia y Gas (Energy and Gas Regulatory Commission). Regulates and manages the transportation and distribution of electric power.
- Comsion Nacional de Regalais (National Commission for Royalties). Regulates the royalties that companies have to pay for rights to explore and exploit natural resources in Colombia (Law 141, 1994).
- ICEL; "*Instituto Colombiano de Energia Electrica,*" (Colombian Institute of Electric Energy). Develops small electric power plants (50MW or less).
- ISA; "*Interconexion Electrica S. A.*" (Electric Tyransmission Company). Regulates and manages the distribution of electricity.
- FEN; "*Financeria Electrica Nacional S. A.*"(National Electric Financial Company). In charge of financing the electric power sector.

3.2.2 Ecocarbon (Empresa Colombiana de Carbon Ltda)

In 1993, the Colombian government reorganised the coal industry by splitting Carbocol (Coal of Colombia - which was formed in 1976) into two entities: a new Carbocol which continues to administer the government's interest at El Cerrejon Norte, and the Empresa Colombiana de Carbon Ltda or Ecoarbon.

As already mentioned, Ecocarbon is a state owned regulatory agency, accountable to the Ministry of Mines and Energy, which manages the state coal reserves and governments interests in coal, outside El Cerrejon Norte (a major coal deposit on the Guajira peninsula) and promotes the national coal mining industry. Ecocarbon's budget for 1995 was equivalent to US$32.4 million. The main source of income are royalties funds and the central budget. Ecocarbon does not compete with the private sector, but provides assistance and ensures that the industry is strong. Ecocarbon does not become involved in the production or sale of coal.

The objective of Ecocarbon is to ensure that the best use is made of the country's coal potential by strengthening the coal sector, encouraging exports and domestic consumption and reaping the general benefits of all factors involved in production.

3.2.3. Minercol (Minerals of Columbia)

In an attempt to reduce internal corruption, new long-term government policies are being developed. It is expected the Ministry of Mines and Energy and the regulatory bodies under it will be combined to form Minercol (Minerals of Colombia).

Minercol will have the responsibility for "policy" making only. In spite of this government restructuring, the commitment to the rationalisation of the coal mining industry will be unaffected.

4.0 The Fiscal Framework

4.1 Foreign Investment

The Central Bank and Monetary Board (Law 9/91) allows the equal treatment of domestic and foreign investors to all sectors with no special procedures to invest.

4.2 Income Taxes

A unitary tax system exists in Colombia. Income from all sources is aggregated and taxed at predetermined tax rates. Income tax is levied at fixed rates on companies, and at a progressive rate for individuals. The tax year is the normal calendar year and tax books must make a closing at 31st December. The income tax rate is 30% for companies.

The only relief's available against taxation are special rules for the computation of international transport income and the treatment of foreign taxes as expenses chargeable to foreign income. Tax paid abroad on income from foreign sources may be deduced from Colombian income tax on the same income so long as it does not exceed it. Foreign companies are assessable of Colombian-source income only.

In accordance with the 1991 Constitution, all taxes must be approved by Congress. However, the corresponding regulations may be issued by the executive government. Income tax rates and rules may be changed by the executive, based on blanket authorisation from Congress. The constitution allows the president of the republic to impose or modify taxes whenever a state of public unrest exists.

A number of investment incentives exists in Colombia. For instance:

- There is a moderate basic income tax rate for corporations and foreign branches.
- Branches of foreign corporations are exempt from the payment of remittance tax on profits reinvested for 10 years.
- Profits derived from foreign investment are fully remittable.
- Tax and non tax incentives are offered to encourage investment and development.

Most new mining enterprises operate on the basis of government concessions. Foreign mining companies interested in developing coal, and other mineral reserves, must incorporate a subsidiary or establish a branch in Bogota and will receive the same treatment as Colombian companies. Exploration costs may be recovered through depletion or, if they discover new resources for a producing company, may be amortised at the rate of 10% per year.

In the case of mines, once the full value of the investment has been amortised by depletion, the mining enterprise will be entitled to an annual income tax exemption equivalent to 10% of the gross value of production less royalties. The system used to determine depletion may be changed only once, with prior authorisation from the Bureau of National Taxes and Customs.

The regulations covering taxation and royalties changed with the 1996 Mining Code. Corporate income tax is levied at a standard 35% rate, there is a 7% tax on funds remitted overseas.

4.3 Addition Taxes

Imported goods are subject to customs duties based on the cif value of those goods. Duties range from 0-60%.

4.4 Depletion

Depletion is applicable only to concessions granted before October 1974. Development costs incurred in later concessions must ordinarily be amortised over 5 years. However, exploration expenses in unproductive zones may be amortised against income form productive zone; in the case of mines, the amortisation must not exceed 10% per annum.

In the case of mines, a tax benefit in the form of an annual taxable income deduction equivalent to 10% of gross value of annual production less royalties is granted to the investor after the investment is fully amortised by depletion.

4.5 Royalties

The state shall receive a royalty for exhaustion or non-renewable resources, according to the "Royalty Law." The payment of royalties is dependent on the income tax. If paid or credited to nondomiciled companies or non-residential individuals such income tax is withheld at the source, if the amount of annual royalties exceeds 3% of the total sales or production of the licenses.

The main objectives of the Royalties Law (Law 141/94) are as follows:

- Creation of a Royalties Commission and Royalties Fund.
- Regulation of the States rights to receive royalties and the production of non-renewable natural resources.
- Definitions of parameters for the calculation of royalties and their distribution between nation and regional entities.
- Projects of 3 Mt/yr or more: 10%; projects of less than 3 Mt/yr: 5%.
- Royalties on coal are 15% of the net mine value which works out at approximately 7 to 8% of the fob value.
- Royalties are calculated on mine basis prices set by the Ministry of Mines and Energy, based on parameters laid down in the law.
- Contracts signed prior to the effective date of the new law are unaffected.

4.6 Sales Tax

Sales tax is a national tax and is the main source of revenue for municipalities. It is in effect, a value-added tax on sales of products and services and is borne by the end customer.

The general sales tax rate applicable to most goods is 14%. However, this is variable, no information is available in the UK on Sales Tax rates for coal and other minerals.

4.7 Remittance Tax

For investments in coal, remittance tax regulations allow 100% of the year's profits to be remitted provided that at least 100% of the initial capital investment is maintained.

4.8 Export Duties

The Andean Community, including Colombia operate Free Trade Zones (*zoans francas*). These have special legal regimes regarding exchange, custom, capital investment and foreign trade, export duties, and tax benefits.

If coal production is exported, IVA can be recovered by a simple request for a rebate of the tax initially paid. Furthermore, export proceeds do not have to be sold for pesos. At present, export tax is at 0.6% of the fob value

4.9 Import Duties

Import duties are of 2 types: custom duties and the sales or value-added tax (IVA). Custom duties based on the Harmonised System and international treaties and assessed by reference to cif value (cost, insurance & freight). They vary according to the type of product and the are in the range 5-45%. On average import duty is around 12%. If coal production is intended for export, investors may use the special imports system (Plan Vallejo) to import equipment duty free.

4.10 Other Customs Duties

Port taxes (impuesto puertos) of 5% of the cif value also have to be paid, as does the custom office tax, calculated on the basis of the value of the consignment, for the first million pesos, 1.5%, for the next 7 million pesos, 1.2% for the next million pesos, 0.6% for values exceeding 10 million pesos. Port charges may also be charges at US$0.55/t. A customer tax (impuesto de consumo) is levied on certain products. There is also a special tax (cuotas de fomento). However, it is not known if these apply to the coal mining industry.

4.11 Value Added Tax

The Colombian equivalent of VAT, Impuesto al Valor Agregado (IVA) is charged on top of the import duty. Current rates are 16% (general) but vary and may reach 45%. The IVA is calculated on the basis of the cif value of the goods plus other duties owed. Certain products are exempt from IVA.

4.12 Property Taxes

Taxes on real estate are assessed by municipalities on the basis of cadastral (land registry) valuations, which are revised from time to time and are also adjusted for annual inflation. Cadastral valuations are usually below market value. The rate of annual tax in urban areas ranges between 0.1-1.6% in all but exceptional cases. In addition to the real estate (predial) tax, levies of property improvement tax (contribucion por valorizacion) are made occasionally near urban areas or along roads to cover costs of public works.

4.13 Power Tax

Power surcharge tax is at 20% of electricity costs.

4.14 Diesel Tax

Diesel tax is at $US0.06/litre

4.15 Salary and Wages Taxes

The Social Security Institute (Instituto de Seguros Sociales; ISS) is an official entity that provides medical attention, pensions and other benefits to workers. All employees, national and foreign, must be affiliated with the ISS by their employers. Contributions to the ISS differ according to area and to salary. In general, two-thirds of the total contributions are payable by employers and one-third by the respective employees. Labour subsidy contributions are at 9% of salaries and wages.

4.16 Payroll Taxes

In addition to ISS taxes, employers must pay the following taxes based on payroll:

2% for a family subsidy fund (caja de compensacion familiar).
2% for the National Training Centre (SENA).
3% for the Colombian Institute of Family Welfare (ICBF).

4.17 Stamp Taxes

Stamp taxes are payable, mainly through withholding, at various rates on commercial and other documents and on share issues and transfers, deeds and many other items. The rate of stamp tax most usually applicable is 0.5%. Fines for improper filing or payment of stamp taxes are, in general, similar as those applicable to income tax returns. Some documents, including company share certificates are exempt from the stamp tax.

4.18 Foreign Exchange Regulations

Exchange controls are now exercised by the Colombian Government thorough authorised exchange market intermediaries such as banks and other financial institutions. This control is intended to facilitate international trade and international investment, reduce administration and simplify procedures relating to foreign trade and international exchange problems.

5.0 The Environmental Framework

In 1993, Colombia established a Ministry of the Environment to set national environmental policy and corresponding regulations for the sustainable use of the nation's resources. The Ministry's policies, plans and projects are executed by Regional Autonomous Corporations. Colombia's National Development Plan (1995-1998) included US$1.4 billion for sustainable development programs. Furthermore, Colombia is receiving assistance from Inter-American Development Bank to implement an energy conservation program under a US$10 million loan, agreed in March 1998.

5.1. Requirements for Environmental Impact Assessments

Under the 1996 Mining Code, environmental studies must be undertaken and permits obtained from the Ministry of Environment, before exploration and mining can be commenced. The Ministry issues terms of reference covering the requirements of work. These are determined based on location, site characteristics and the development proposed. Mining Projects must obtain a single environmental licence.

6.0. Relationship With Power Sector

Energy demand has, for many years, been showing a strong correlation with the country's pattern of social and economic development and demand growth rates. At the end of 1999, total national electrical energy demand is expected to reach an average of 126 GWh/day, 2.8% more than in 1997.

Colombia has large reserves of hydroelectric power that currently accounts for approximately 80% of installed generating capacity and less than 10% of the available sites have been utilised. In 1994, coal fired power generation consumed some 1.9 million tonnes per annum. Power generation using steam has played a minor role nation-wide due to the development of hydroelectric projects that have used the abundant water supplies in Colombia's rivers and mountainous terrain.

Because of severe droughts in the 19902's the Government has decided to proceed with the construction of a fourth coal-fired unit. The government is considering placing a levy on hydroelectric and gas fired power stations in order to subsidise the construction of up to 1500MW of coal-fired capacity. Furthermore, one or two 250MW coal-fired plants may enter the system in the next century. The Colombian Government has been collaborating with the coal industry, to promote public and private sector participation from local and foreign investors. Colombia's "*Generation – Transmission Reference Expansion Plan for 1996-2010*" is intended to move Colombia away from its traditional dependence on hydro-electric power generation to secure a minimum of 95% of long term reliability of energy supply.

The Colombian energy sector envisages local and foreign private participation in the key infrastructure investments for the energy supply. The Ministry of Mines and Energy, is bound by policy to regulate the generation, transmission, interconnection and distribution activities. To complement and execute the activities of the Ministry, "Interconexion Electrica S. A (ISA)" define programmes to expand all aspects of the interconnection system, including generation and transmission facilities. However, this must complimented by a guaranteed supply of coal.

7.0. Relationship With The Transportation Sector

Historically, poor transportation and lack of adequate infrastructure has hindered coal exploration and mining. The Colombian government has recognised, that the country's infrastructure must be developed before its huge coal reserves can be exploited. In recent years there has been a commitment to develop the national transportation and export facilities. A fundamental strategy has been the link-up with private sector for the rehabilitation, maintenance and operation of the railways system. The 1500 km Atlantic Network was opened to concession tendering in 1997 and includes a link for the coal sector connecting certain areas. Drummond Coal has incurred major capital costs in contributing to this rehabilitation. The government has committed US$ 140 million to the La Loma-Cienaga Atlantic Network in conjunction with the private sector. There exists the possibility to introduce tariffs for coal transport. A further rail link is planned between Colombia (La China) and Venezuela (Fria). Coal producers in the eastern part of Ceser are expected to benefit from this transportation network.

The main ports for coal export are Baranquilla, Cartagena and Santa Marta on the Atlantic Coast and Buenaventura on the Pacific. These ports were privatised in 1995 and regional port companies established to operate them. There are plans to construct a canal between the Atlantic and Pacific Coast to facilitate coal transportation.

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COUNTRY PAPER

INDONESIA

1 Introduction

Coal mining has grown into a major industry since the early 1980s though it has existed for many years 1998 production was 61.96 m/t of which 47.18 m/t was exported. Underground production is approxima 3% of the total production with 1.90 m/t, while open cut coal mining makes up the other 97% at 61.99 m

Due to the rapid development of the Indonesian coal industry, the government has attempted to develop a dynamic yet stable climate for the industry. While the intention has been generally well considered, and security of the agreements with the GOI is assured, the implementation of the day to day elements has been less than satisfactory. This applies particularly insofar as the speed with which the changes have been made.

Briefly considered here are two changes directly related to the coal industry, which are a) various changes to the coal contract agreements, and b) the proposed Coal Policy, and one of a more wide ranging nature, relating to foreign investment in the country.

1.1 Coal Contract Agreement Changes

The principal changes that directly impacted on the industry, as far as its development was concerned, have been introduced via the amendments to the contract of work system.

Generation I (Coal Cooperation Agreement or CCA) was instigated primarily as a result of the oil crisis of 1973, when the ASEAN countries undertook to diversify utilization of their primary energy demands or sources. Coal became important at that time and Indonesia thus embarked on a policy of encouraging investment in the industry.

The 1st Generation was put in place primarily by negotiation with some element of bidding. They were signed in the mid 1980s. Since they were the first attempt to seek foreign investors, the initial signatories were foreign. These agreements were structured as a 'production sharing contract' in partnership with the State Coal Company which held the lease, and which, was contractually, a partner. The impact was that the country moved from a minor, producer and domestic consumer of coal of less than 1 mtpa in 1982 to over 50 mtpa in 1998, > 75% of which is exported. Foreign investment thus increased significantly, and the annual foreign exchange earnings account was strengthened.

The 2nd Generation of CCAs arose as a result of objections by domestic companies claiming they did not have a chance to invest in the coal industry, since all but one were foreign controlled. The government closed the system to foreign entities for the 2nd Generation of CCAs. In this generation, 19 domestic companies signed the agreement with the government, via the State coal company. These were signed in August 1994.

With some exceptions, the objective of the applicant companies appeared to be primarily interested in selling their license to serious developers for significant sums of money. The holder of the license undertook minimum or no exploration. This situation developed as a result of loose interpretation of the application regulations that were designed to ensure only serious coal developers were granted licenses.

The result of the previous action was to force serious domestic and foreign companies to joint venture with the license holders in the development of the resources. The license holders, for the most part, had no inclination or intention to fund the exploration work nor did they possess the expertise. Since the entry prices that were being asking was exorbitant, development stagnated for a period.

Subsequent to signing the 2nd Generation, the MOME merged the two State coal companies, and at a later date transferred the control of the coal contracts from the state coal company to direct control by government. The Directorate of Coal (DOC) assumed this responsibility. The impact that resulted from this change was:

- applications were again accepted from foreign companies, of which a number were granted;
- A significant delay occurred from the last signing in 1984 until late 1998 when the Generation III contracts were signed.
- Minor changes were introduced into the agreement but none were such as to deter the applicants from proceeding with their application.

Of interest, for the first time the DGM signaled the potential for reducing the coal production share from 13.5% to a lower, unspecified amount, provided certain conditions were met. This opportunity is now being tested, as previously mentioned.

The Government is now proposing a 4th Generation of contracts which are expected to provide a wider, and possibly specified, range of community services and infrastructure. It is not known what other changes will be inherent in the new contract.

1.2 National Coal Policy

The draft coal policy is expected to result in changes to a wide variety of aspects related to the coal industry. The draft has not yet been submitted to the parliament for consideration. In light of the somewhat strident calls for less foreign influence in the country, it is not possible to judge if the nationalistic elements will reverse the progress of the past 20 years although the new President has demonstrated a more benevolent approach to governing than has been the case in the past.

Implementation time, even under the timing proposed in the document is over a 5 to 10 year period. It is considered that the schedule proposed is optimistic, even under the best of circumstances.

1.3 Foreign Investment Regulations

For the past few years recognition of the importance of foreign investment has been a foundation of government policy. Investment policies and regulations have generally been directed at removing a number of the barriers to foreign investment. Most recently the government has passed legislation to enable 95% foreign ownership of the banking sector, in spite of there being concerns and resistance in some sectors of the business community. It is expected that this trend will continue.

2. Legal Framework

2.1 Mining Act

The Mining Act (Law # 11 of 1967) is the basic law regulating the mining industry. It is based on Article 33 of the Constitution, which decrees that the state has total ownership over the nation's land, water and mineral resources. The administration of the Mining Law is governed by Government Regulations, Presidential and Ministerial Decrees. The current law is now being re-drafted and a new law is anticipated in the near future.

Mining operations can be undertaken under a number of licenses or authorizations. The two most common forms are:

Mining Authorization (Kuasa Pertambangan or KP) which is issued to either State or private companies. To date these have been limited in size, if applied for by private investors, and also limited to domestic companies. It is possible that foreign companies may be permitted to apply for these forms of title in the future.

Contract of Work – these may be applied for in 'general mining' (minerals other than coal) or for a **Coal Contract or Work** (CCoW). The latter form can be a contract between a purely domestic company, or a foreign - domestic joint venture company. The company holding the contract of work is licensed specifically to undertake coal exploration and development. This form of contract is based on Article 10 of the Mining Act and Article 8 of the Foreign Investment Act. *It is important to note that this is the only form of contractual agreement available to foreign investors in the coal or general mining industry that has any basis in law.*

Initially, the form of agreement between the government and the investing company was termed a Coal Cooperation Contract (CCA). It has also been referred to as a Production Sharing Contract, since it was modeled on the petroleum industry production sharing contract. Two generations of this form of agreement have been issued by GOI. The 1st Generation was primarily initiated to encourage foreign companies to investor in the coal industry. The 2nd Generation was confined to the domestic investors for what might be termed nationalistic reasons.

The CCoW has since replaced the CCA for the third generation of agreements. A fourth generation has been drafted for approval by parliament, but has yet to be issued. Each generation has been modified in various clauses to reflect changes in the government position with regard to investment in the coal industry

Coincident with the change in the agreement title, the management of the contracts was moved from the State Coal Mining company, PTBA,\[1] to the Directorate General of General Mining, a directorate within the Ministry of Mines and Energy (MOME).

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[1] The first and second generation coal contract were signed between the private company and the state company, Perum Tambang Batubara (PNTB). This company was later merged with PTBA, and hence the contracts were transferred to this company. Refer Doc 2-09.

The fundamental aspect of both the CCA and the CCoW documents that they are *lex specialis* (special terms) with regard to the laws governing the management and operation of the contract. The articles of the CCA and the CCoW therefore take precedence over the general laws of the nation. This special treatment applies to all the laws that might apply to the contract, such as taxation, depreciation rates, duties and such like.

This however is a two edged sword, so to speak. For example, in the 1st Generation CCA, the corporate tax rate is specified as being 35% for the first 10 years of production, then increasing to 45% thereafter. However, in recent years the maximum corporate tax rate has been reduced to 30%, but no alleviation of this situation is provided for in the agreement.

The changes introduced in the 3rd, and more so in the 4th generation of contracts, have been done in order to bring the contract more into line with the general laws. While the term *lex specialis* is still used today, it has a somewhat more muted meaning. In respect of the taxation provisions, refer to Note 3.3 for further comment on this aspect.

A recent change that has been raised by the government is a change in the rate of royalty or, more correctly, the production share of the coal that the mining company has to pay to the government. This share has been set at 13.5%. Initially, this "share" could be paid either "in kind" or as a cash payment. The government is *now prepared to consider* a reduction of the production share from 13.5% to a figure not less than 7% or 8%. However, an economic rationale has to be presented for this reduction to be agreed to by the government. One company is currently negotiating such a change, but no agreement has been reached to date.

A negative element to the granting of CCoWs has been inordinate time delays in securing approval of applications. While Generation I CCAs were negotiated and signed over a period of time, the subsequent two generations were dealt with in batches. This aspect has created considerable stress within the coal industry companies since they are delayed from proceeding with their work programs.
The TOR raised the aspect of tendering for coal areas. To date there are no new areas that have been tendered, however the government has promulgated regulations for tendering of relinquished areas.

Priority is given to neighbouring license holders but those companies have to pay double the "compensation fee". This fee is to reimburse the government for the data that is provided in respect of the relinquished area to which the applications refers. It is interesting to note that the data for which DGM is charging the new applicant is data provided to the GOI under the terms of the previous title holder's contract agreement, and hence has been acquired at no cost to the GOI. The determination of the quality of the data, which determines the fee, is the right of DGM. The fees are currently set at:

• Category A:	Data complete	Rp 150 million	(US$18,750)
• Category B:	Data moderate	Rp 100 million	(US$12,500)
• Category C:	Minimum data	No fee	

Some areas have been released for tender but to date they have not been widely advertised, primarily, it is stated, to give the opportunity to domestic companies. One particular case has resulted in a court case, since the government took the position that the areas had been cancelled, but the company considered it was an illegal act. The area was tendered, and awarded to domestic companies.

2.2. Regulation of the Ministry of Mines and Energy

Regulation of the Ministry of Mines & Energy No. 555 of 1995 is the basic law governing the operation of mines in the country, both for general and coal mining.

Policing of the regulations is not strong, and attention needs to be directed at this aspect in any developing industry. The weakness in not necessarily in the regulations themselves, rather it is in the degree to which they can be manipulated. We are also advised that some translations of this decree are flawed and do not correctly represent the intent of the Indonesian version. It is not known whether this applies to this translation or not.

2.3 Foreign Capital Investment Law

The Foreign Capital Investment Law No. 1 of 1967 governs foreign investment in the country. In the case of the coal industry, foreign participation is further governed by Presidential Decree No. 49 of 1981, which deals with the cooperation of the foreign entity with initially the state coal mining company (PTBA). This responsibility has subsequently been passed to the Directorate General of Mines. Presidential Decree No. 20 of 1994, amended Law No. 1 of 1967 to provides for a nominal 100% ownership by a foreign company in Indonesia, although in practice this is generally regarded as being 95%.

The term used to describe a foreign joint venture company in Indonesia is PMA. This entity is established under the guidelines of the Foreign Investment Board (BKPM) as a joint venture between the foreign and domestic companies to undertake a specific business activity. The investment approval is for the specific business activity for which the application is made, in this instance – coal mining - and specifically excludes any other business activity. In the case of the coal industry, it is the PMA or joint venture company that receives the mining permit to undertake exploration and exploitation of the coal resource.

The final approval for the establishment of the PMA company is given by the President of Indonesia, upon the advice of the relevant ministers, and with the specific approval of parliament. This latter aspect is an important element since there has been considerable time delays in receiving parliamentary approval in the past. However, the process has been accelerated in the past 12 to 18 months.

In instances where a foreign company enters into a joint venture with a domestic company that holds a CCoW, the new company has to be incorporated as a PMA entity. In the current nationalistic climate, there has been a recent reluctance by the current mine's minister to take at least two applications to parliament for approval for assumed reasons of rejection. This has resulted in delays to the investment of the projects. Whether approval of an investment of this nature need go to such a high level is questioned.

3. Fiscal Framework

Taxation in Indonesia is governed primarily by Laws 9,10,11 & 12 supported by a plethora of Regulations, Decrees and other Elucidating documents.

It is important to make a number of comments regarding the tax laws and their implementation.

1. Tax Incentives: as a firm principle, the GOI has been firmly against the concept of tax incentives in the form of tax holidays; (unless the individual was closely connected to the former president.) It has maintained that limited taxation benefits in the form of reduced dividend tax levels, as one example, and the *lex specialis* conditions of the contracts, that is a certainty of taxation levels, coupled with "clear tax laws", over-ride the illusory benefits of tax holidays.
2. As a general comment, the contracts of work, having been drafted by mining technicians, are an ineffective attempt to accurately summarize the tax law, and combine special conditions. The end result is an unclear document that generates uncertainty as to what terms are in fact *lex specialis*, and what are governed by the applicable tax law.
3. In the implementation of the tax laws in relation to the contract of work, the tax authorities pay no heed to the conditions in the contract documents, and treat the company as if it were under the general tax law. While this situation might be common to many developing countries, it highlights the importance of drafting contracts that take account of the realities of the situation if investor confidence is not to be weakened.
4. While the mining industry is a long term, high-risk sector, there are other sectors in Indonesia that receive more favourable taxation treatment than the mining industry.
5. One aspect of the fiscal regime that has created considerable concern in both the mining and oil industries is what is termed "ring fencing". This concept applies particularly to foreign investment approvals in the two named industries, and especially in the manner of treatment of taxation. In essence, ring fencing means that costs incurred by a company in one project cannot be offset against revenue from another project owned by the same corporate entity. For example, Company XYZ might control a number of CCoW via subsidiary companies, but the revenue and cost streams from each CCoW cannot be consolidated in the corporate accounts. Even though this is perhaps a policy issue, it has tax implications in that the development costs of one project cannot be offset against the income of another project. As a result, inter-company charges are subject to withholding, and possibly VAT.

   There have been a number of attempts to secure acceptance by the Ministry of Finance that inefficiencies exist in this arrangement, but no change has been forthcoming to date.
6. An issue that is yet to be clarified is the government's stated intention to restructure resource tax receipts. As noted elsewhere, there have been many complaints that the provinces have not been receiving their share of the royalty payments made by the production sharing contractors. In some instances, the local parliament and business persons have laid the blame at the feet of the coal companies, whereas in practice, the royalty payments were never distributed by the central government as they should have been according to the laws and regulations.

   Recently the government passed legislation to channel tax collections that in the past have been utilized by the central government. It is expected that it will take two years to transfer the authority for the utilization of these monies to the provincial administrations. The impact is not expected to change the coal contract system materially, however delays in implementation are expected to continue to have a negative impact of company – local community relations.

7. In concert with the issue in item 6, it is possible that a re-distribution of the amount of taxes that are remitted to the provincial governments may be re-aligned to provide a more equitable distribution of resources revenues.
8. With regard to the production share of the coal produced, or royalty, it was initially to be paid "in kind", such that the government could dispose of it by sale itself, or utilize that tonnage in its power stations. While the concept was sound, the implementation was not, because politically connected parties were able to secure the tonnage for sale, "on behalf of the government" but the return to the state was severely reduced due to the practice allowed to develop. Subsequently, the royalty was paid in cash to PTBA and it is now intended that the royalty be paid directly to the state treasury.
9. Determined by government decree, the royalty has not been fully or effectively implemented. The 13.5% royalty is intended to be distributed within the government as follows: 4.0% Royalty or coal tax; 1.2% VAT
   8.3% Coal Development Fund.

What proportion of these amounts are to be distributed to the regional governments under the 80% distribution plan has not been finalized to date.

4. Environmental Framework

4.1 Environmental Legislation

The laws enacted for environmental protection are applicable to all projects and are monitored by the one agency – BAPPEDAL. Individual ministries do not set their own standards, but have to conform to the national standards. For example, mining developments have to conform to the national standards, not standards that might be considered appropriate by the MOME.

Considerable pressure has been exerted by international lending agencies on Indonesia to enact appropriate laws and regulations to ensure protection of the environment. In the past years that legislation has been put in place and all major developments and infrastructure projects are required to have environmental impact statements prior to being approved. Regrettably the implementation of the laws is weak and has been subject to manipulation by influential or politically connected parties.

It is also understood that while there are laws in place the governmental environment agency – BAPEDAL – has not been given sufficient powers to police the laws, not are the sanctions sufficiently stringent to deter offenders. The potential to be taken to court is low, the power BAPEDAL is almost non-existent in a weak court system where manipulation of the law is prevalent, and if fines imposed, they are minimal.

4.2 Environmental Impact Statement

In order for a mine development to be approved by DGM, an EIS has to be submitted in conjunction with the company's feasibility study. The approval of the EIS is mandatory for DGM to give approval for the mine construction to proceed. The assessment of the EIS or ANDAL is by a joint inter-departmental committee comprised of all relevant ministries.

The EIS is comprised of a number of parts – the base line monitoring plan and the impacts that might develop from the mine development, an environmental management plan (RKL) and an environmental monitoring plan (RPL). These three documents are an integral part of the approval process for new mine development, and later monitoring of the development will be controlled by the RPL.

5. Institutional Arrangements

5.1 Ministry of Mines and Energy

The prime responsibility for the coal industry resides with the Minister of Mines and Energy. The Minister is directly responsible to parliament. Most of his responsibilities are delegated to the Director General of General Mining, or the Director responsible for the Directorate of Coal. In spite of this delegation, decisions are rarely taken without reference to, and the approval of the Minister.

The principal point of contact for the coal industry is the Director of the Directorate of Coal, but higher level advice and decisions usually emanate from the Director General. The Directorate of Coal is primarily a policy making body, with some responsibility for applications and statistics relating to the coal industry. Regulatory issues are primarily dealt with by DGM.

5.2 Administration

At various stages a number of government entities become involved in the approval process for a coal exploration and mining operation. Only a limited number of regulations have been translated into English, usually as result of private company initiative, and hence are not publicly available.

The most important linkage is that between Forestry and Mines. However, since there is limited coordination between the two departments, delays in receiving approvals are inordinately long, and are at times refused by Forestry, in spite of there being a prior right by the mining industry to access to the land.

Delegation of authority from the central government to provincial government has been limited to only one category of minerals. Approval for exploration and exploitation of this category of minerals rest with the local government, under the control of the governor of the specific province.

There are indications that the government might consider transferring more responsibility to the regional or provincial governments in the future. This concept has been proposed in an informal manner, and change is not expected to occur in a short period of time. This impetus is related to the stated intent of the government to decentralize many of its functions. Note however, that the present government has to be considered transitional, and a new government might take a different approach.

5.3 Power Sector

The State, through its wholly owned subsidiary, PT PLN, is the only generator of power, with the following two "exceptions":

- captive power for specific industries – for example, mining and industrial complexes that are remote from a power grid, or where the grid supply is considered to be too unstable, expensive, or unreliable for industrial usage. These facilities are licensed by the State through PLN; and
- The Independent power producers (IPP), that remain in existence, and that have a power purchase agreement with PLN.

There is no formal or government controlled linkage between the coal and power sectors as a whole. The only linkage that can be considered to exists is that of a commercial one between the producer / seller and buyer / consumer of fuel.

In that the State coal mines operated in South Sumatra were established to provide fuel for the PLN electricity generating facility at Suralaya in West Java, a linkage exists in the sense that both entities are government companies. However, PLN is also free to buy coal from the private sector if PTBA is not able or willing to provide the total requirement of the power station. This situation has applied in the past, and applies today for reasons of shortfall in supply from the PTBA coal mine.

PLN also buys coal from the private sector for its generating plants in East Java. No controls exist except for the government-mandated public tendering process, and the potential for PLN not to buy coal if it considered the price to be too high exists.

Issues related to the power sector are wide ranging and especially in regard to the IPP sector in Indonesia and the current bankrupt situation that PT PLN has reached. This in itself is requires special treatment, and is beyond this scope of work.

5.4 Transportation Sector

5.4.1 Rail

An informal linkage exists between the state owned companies, the State Coal Company, PTBA, and the State Rail Company, PT Perumka, in respect of coal transport from the mines at Tanjung Enim in South Sumatra to the PLN Suralaya Power Station in West Java. The contract covering this transportation of coal is government controlled in that it has to be approved by the Ministry of Finance, and to a large extent both sides pay and accept whatever the government considers reasonable. It is unclear whether Perumka covers their costs and produces a profit on the operation since the rates are extremely low, so in effect, one government company is subsidizing another government company. On the other side, PTBA has limited leverage over failure of Perumka to provide a timely service, and most recently shipments have been reduced due to the inability of Perumka to carry the full commitment of tonnage.

In addition, PTBA rails coal from their Ombilin Mines to the port of Padang in West Sumatra. A similar situation exists in this rail sector as with the South Sumatra sector.

Coal transport involving the private sector occurs in Indonesia:

i. sporadic shipments of coal from private producers over the West Sumatra rail sector, when capacity has been available; and

ii. **private sector produced coal to cement factories in West Java from a port near Merak. Both these routes are owned and operated by Perumka since there is no private ownership of rail in Indonesia at the present time.**

5.4.2 Sea Borne Transportation

Sea-borne transportation of coal occurs in the supply of coal from the PTBA operated mines in South Sumatra to the Suralaya Power Station in West Java across the Merak Straight. This is sub-contracted out by PTBA to a private shipping company. Rates are controlled to the extent that they are awarded as a result of public tender.

Some government companies buy coal from private producers in Kalimantan and West Sumatra or Bengkulu for cement manufacture, smelting and general industry. These shipments are all barge transport and are inter-company contracts without direct control from the government, apart from the requirement for competitive tendering, if a State owned company is the buyer.

The bulk of coal produced in Indonesia is transported by sea either domestically and for export. However, prior to being loading on a deep-sea vessel, barge shipments from a mine owned barge loading facility is common. Vessel loading occurs either by transhipment at sea or via a ship-loading terminal.

6. Stakeholders

6.1 Local Communities

Concerns have been raised that the mining companies provide insufficient support to the local communities. In some cases this complaint appears to be valid, in others there are indications that outside parties are instigating the complaints.

To a considerable degree, the basis for some of the complaints is that the central government has not distributed to the regional governments their mandated share of the coal royalties. In some instances, the regional authorities have taken the position that the coal companies are responsible for payment of the funds directly to the provincial government. Much of this tension has developed since the fall of the past president, and the new freedom to comment and criticize without fear of sanction or goal.

The impact on local communities can be either positive or negative, depending on how the issues are handled by the particular coal company. For the most part the benefits are positive for the affected communities. With few exceptions, the coal companies recognize that without community support, they will be negatively impacted in their mining and coal hauling operations.

The most serious impact is the disruption to farming that can occur, in spite of the government mandated compensation program. Considering this aspect, it is generally the coal operator that suffers most, since the compensation levels are usually extremely high. The level set at times is such that development is either hampered or delayed until a reasonable settlement can be achieved. In this sense, the local and central government authorities are either unable or unwilling to resolve the problems. This is another example of the failure of the implementation process in spite of clear regulations not enacted.

Benefits to the community as whole have included:

- Training programs for workers at the mines.
- Establishment of small business enterprises such as land and fish farming, transportation enterprises.
- Infrastructure such as roads, schools, clinics.

These groups generally have little public input, but do impact on the mining company in their area of influence. Impact results from the local communities is where there are vested interests who use the communities for their own ends; refer comment re NGOs. In some instances, well meaning, but not fully informed local government officials in the environment monitoring fields "encourage" the local community leaders to become vocal in respect of real or perceived damage to their environment or health.

While there are clearly instances where the concerns are real with regard to disrespect for the environment, the issues commonly become wider and emotionally charged, to the detriment of the real cause. Hence the response is commonly negative and little is achieved in the real sense.

The Indonesian coal mining companies, for the most part, recognize the importance of the an involvement with the local community.

6.2 Mining Companies

On the operating side, the industry is concerned that there is little coordination between the various government departments that are involved in providing permits, and supporting or monitoring the coal industry. This situation occurs in spite of joint decrees being issued by the relevant ministries. Some of the impacts that have developed and are considered by the industry as detrimental to investment are:

1. *There are considerable delays in securing approval for activities*:

This situation is especially so in respect of the Forestry Department where conflicting land use is an issue, in spite of the fact that a mining application or activity has a prior right. In some areas, mining has a prior right over forest development. Another area is land compensation for the local people and local industry.

2. *In the case of land use, conflicts can develop to an extreme degree:*

The local office of DGM is tasked with the responsibility of resolving issues such as arriving at a fair and reasonable compensation to the land owner.

In other situations, as soon as it is suspected that mining activity might be imminent, planting of crops or most commonly, trees, will occur in a very rapid manner, with the intent of seeking compensation or thwarting the mine development. In instances, this occurs with the support of politically connected business entities, clearly with the support of the local government for pecuniary reasons.

3. *Illegal mining activity is not controlled and hence the resource developed by the coal company is mined and sold by "local" persons:*

There are a number of issues relating to this situation – loss of coal to the coal company, intrusion in mining activities and problems of control due to a breakdown in authority, loss of royalty to the state, to list the more obvious. The inability of the authorities to control the situation is such that even over coal resources owned and mined by the state coal company, PTBA, illegal miners cannot be eliminated.

The supposed basis of the illegal activities is a result of the current economic crisis, and hence the activity stems from the need of local people to earn some income to survive. However, this position ignores a number of questions:

- how can local people afford to acquire the heavy equipment (front end loaders, bulldozers etc) and trucks for the operations.;
- illegal mining has been going on in South Kalimantan for some 4 to 5 years, but the authorities have been unable or not willing to cause the mining to cease;
- information generally available indicates that the operations are controlled by influential or politically connected business persons;
- the fact that the activity has now extended in a broader geographical manner, both within the province, and to other provinces, is the only cogent support for the need for income theory.

Clearly the issue in this situation is that while there is a requirement for laws to protect both the industry, and the government, there is also a demand for will power to police the offenders.

6.3 Coal Consumers/Importers & Coal Transporters

No associations directly related to the coal industry and thus no data secured.

6.4 Unions

Unions and unionism in Indonesia is a contentious and sensitive issue. Previously, all workers had to be members of a government-controlled union. This situation has been relaxed to a large extent and more changes are expected in the future. However, the unions have had minimum or no input in the past into their conditions of employment, but this situation has changed with the fall of the past president, and further changes are expect in the future.

Generally, there are few unions involved in some businesses, and very few in coal mining. Major companies, such as Kaltim Prima attempt to have their workers under one local union independent of the government controlling body.

During 1997, a number of industrial disputes developed on most of the mines in East Kalimantan. Most mines were affected at various times and to varying degrees. These disputes did not appear to be union instigated, rather than emanating from a general level of unrest within the community. All the disputes were eventually settled by negotiation, although at least one mine dismissed the total workforce, and then re-hired those that were willing to work under company proposed conditions.

6.5 Producers Association

Two entities come under this heading:

- Indonesian Coal Producers Association, and
- Indonesian Mining Association (IMA)

There is little information available on the former organization. However, IMA has compiled a submissions base don input from member companies.

Many of the changes that are in that document are proposed for inclusion in the 4th Generation CCoW, in particular, the aspects that deal with community support, local infrastructure development, such as schools, hospitals, roads, etc.

IMA has retained Price Waterhouse Coopers Management to prepare survey of the mining industry. The results of that study should be available in late June 1999.

7. Coal Pricing

A linkage exists between the two entities– the State Power Company, PT PLN and the State Coal Company, PT BA, in respect of sale of coal from the mines at Tanjung Enim in South Sumatra to fuel the Suralaya Power Station in West Java. The price has to be agreed to be by the Ministry of Finance, as the shareholder for the government of these two corporations. At the current time, PTBA receives less than an equitable amount for the coal and has to supply the coal to the power station at a loss. They have in recent months cut back their supply partly for this reason, coupled with an inability of the State railway to be able to carry the full tonnage.

In addition, PTBA sells coal from their Ombilin Mines to Cement Padang, a State company, and to a power station at Ombilin operated by PT PLN.

DISCUSSION

APPENDIX A

LIST OF DOCUMENTS

ABBREVIATIONS

DGM	Decree of director General of Mines
GR	Government Regulation
PD	Presidential Decree
MD	Ministerial Decree
MR	Ministerial Regulation
MOME	Ministry of Mines and Energy
MTDC	Mineral Technology & Development Centre

The title of some of the laws or decrees may have been shortened or abbreviated for space reasons. It is stressed that since to all laws and regulations are promulgated in the Indonesian Language, sources of the translations vary, the accuracy of the translation may be uneven, and a complete set of documents is not available.

Included in each TOR section are various relevant documents grouped under Laws and Regulations, Other Documents and Separately Bound Reports, as appropriate. The documents under the first two groups are bound in a ring binder by section and number. The documents are numbered according to the TOR section, e.g Section 3.2, document number 2-xx. Etc.

Documents with blue colour are key documents in respect of this study.

Doc #	Date	Title	Description
SECTION 3.2 – BASIC LEGAL FRAMEWORK			
3.2.a Laws Relating to Coal Mining			
1960- 1980			
2-01	10-14-60	*Law 37 of 1960* Concerning Mining	An earlier mining law for the republic.
2-02	06-01-64	*GR No. 25 of 1964* Classification of Minerals	Specifying the grouping of minerals in to Strategic, Vital and others.
2-03	12-2-67	*Law 11 of 1967* The Basic Provision of Mining	The current basic Mining Law; including cancellation of previous Law No. 37 of 1960.
2-04	12-31-69	*GR 32 of 1969* Implementation of Law 11 of	Implementing regulations for the Mining Law – refer next

Doc #	Date	Title	Description
		1967 Translation A	document
2-05	12-31-69	*GR 32 of 1969* Implementation of Law 11 of 1967 Translation B	Implementing regulations for the Mining Law – Differences in interpretation and translation in this version to Version a.
2-06	undated	*Elucidation of GR 32 of 1969*	Self explanatory
2-07	08-15-80	*GR No. 27 of 1980* Grouping of Minerals	Refinement to GR 25 of 1964, June 1, 1964. Re grouping of minerals.
1993			
2-08	01-19-93	*Regulation of Minister of Mines 01P/036/MOE/1993* Procedure for Application for Private Company as PTBA Contractor under CCA	Procedure relating to lodging an application for a CCA with PTBA.
2-09	02-27-93	*PD 21 of 1993* Basic Provisions for Cooperation Agreement of Coal Mining Between PTBA and Contractor	Related to change of responsibility from Perum Tambang Batubara to PTBA
1994			
2-10	05-19-94	*GR No. 20 / 1994* Investment	Approval for foreign Investment.
2-11	11-18-94	*MD 2202 / 1994* Granting of Preliminary Investigation Permit – Foreign or Domestic Investment in General Mining	Relates to approval to undertake exploration under SIPP (preliminary investigation) prior to formal signing of contract with GOI.
1995			
2-12	03-22-95	*DGM Instruction 04I/291/DJP/1995* Cost Realization in the First Year Reaching at least 80% of Budget.	Requirements and reporting re the minimum expenditure for various mineral types and regions.
1996			
2-13	01-08-96	*DGM Letter 31/201/DJP/1996* Re-opening of KP/KK/KKB applications.	Instruction re title of letter.
2-14	01-08-96	*DGM Circular 01.E/80/DJP/1996* Applicants for Mining	Bond stipulated as being Rp 10,000 per ha.

Doc #	Date	Title	Description
		Concessions (all forms) Obligation to Deposit Seriousness Bond.	
2-15	01-08-96	*DGM Circular 02.E/80/DJP/1996* Improvement of DGM Circular 01.E/80/DJP/1996 on the Seriousness Bond	Amount stipulated as Rp 10,000 or US$5.00 per ha.
2-16	01-08-96	*DGM Circular 03.E/80/DJP/1996* Applicants for working Contract/Coal Working Contracts Already Obtaining a License in principle must check their areas in order to obtain maps.	Requirement to check their areas with the DGM department responsible for such matters, and provide maps to DGM.
2-17	01-22-96	*MTDC Decision 249 / 1996* Supplement to Stipulation of MTDC Decision No. 85 /1996 on Information Services.	Fee to be paid for applications of relinquished areas for supply of data.
2-18	01-24-96	*MD Decree 44 /1996* Extension of Mining Assignment to Regional Office South Kalimantan	Assignment of authority to regional office (Issued to all regional office from time to time)
2-19	02-16-96	*MD Decree 92./ 1996* Opening of Opportunities for Private Sector in Coal Mining Kutai Regency, East Kalimantan	Transfer from State reserve to the private sector. (Believed done in response to political pressure since State reserves not often released)
2-20	03-20-96	*MD 134 /1996* Utilization of Maps, Clarification of Boundary Areas, Size of Mining Rights, COW & CcoW	Areas of concessions etc
2-21	03-20-96	*MD 135 /1996* Evidence of Readiness & Capability of Applicants of Mining Rights, Coal Contract of Work	Guarantee deposits, reporting and general provisions.
2-22	05-03-96	*DGM Decision 154/K 27/1996* Procedure for Mine Concessions etc Area Reservation.	Reservation of areas in relation to contract areas.
2-23	05-03-96	*DGM Decision*	Self Explanatory

Doc #	Date	Title	Description
		155.K/861/DDJP /1996 – Procedure for Reimbursement /Release of Seriousness Bond	
2-24	05-31-96	*DGM Decision 208.K/861/DDJP* /1996 – Areas of former Mines Concessions (KP) / working Contracts (KK)) /Coal Contracts (KKB) / SIPP.	Release of areas that have been relinquished back to the government.
2-25	05-31-96	*MTDC Decision 1290.K/KBPP* /1966 - Procedure for Information Services for Reservation of Former mining Areas – KP, KK, SIPP	Tender of areas relinquished by the companies.
2-26	07-24-96	*DGM Announcement 05 P/29/ SDP/ 1996* Opening up of Opportunity to Reserve Areas of Former KP/KK/KKB SIPP areas	Notice of tender of 6 areas, 2 of which are coal.
2-27	08-01-96	*DGM Regulation 336 / 1996* Relating to Return of Reclamation Bond	Conditions that have to be abided by to secure return of seriousness bond lodged with CCoW application
2-28	08-01-96	*DGM Regulation 338/661K /1996* Supplement to DGM No. 155/8610 of 1996; Doc # 2-23	Statement that has to be signed re previous regulation.
2-29	09-25-96	*PD 75 of 1996* Main Provisions of a Work Agreement on a Coal Mining Undertaking	Possible relaxation of 13.5% royalty, payment of other taxes, foreign ownership provisions.
2-30	10-18-96	*MD 1409 K/201/M.PE/1996* Procedure for Applying for & Processing the Granting of Mining Concessions, Work contract and Work Agreements	Self explanatory
2-31	10-28-96	*Decree of Minister of Home Affairs No. 180/1996* Procedure for distribution and utilization on the portions	Applies to general mining and not specifically coal mining which is covered under the terms of the coal contract agreements. Refer also Min of Finance Decree

Doc #	Date	Title	Description
		received by regional administrations from proceeds of the State's levies in the general mining area.	no. 127 of 1997
2-32	11-1-96	*DGM Instruction 12 I/1996* Processing of Applications for Mining Concessions, Work contract and Work Agreements	Self explanatory
2-33	11-29-96	*DGM Decree 661 / 1996* Granting of Mining Authorization	Procedures re the granting operation of a mining authorization. (KP)
2-34	11-29-96	*DGM Decree 662 / 1996* Procedures & Requirements for Filing & Processing an Application for a Working Contract	Procedures re the granting approval of a "working contract" or CoW - general mining, not coal contract
2-35	11-29-96	*DGM Decree 663 / 1996* Procedures & Requirements for Filing & Processing an Application for a Work Agreement on Coal Mining Operations	Procedures re the granting approval of a "working agreement " for CCoW - coal contract
	1997		
2-36	02-26-97	*Decree of MOME No 137 K/201 /MPE/1997*; Regarding the Applying for & Processing of Mining Rights	Delegation of responsibility from Minster to Director general for General Mining
2-37	03-31-97	*MoF Decreee 129/KMK017/1997* Management & Use of Non Tax State Revenues Originating in Coal Production Fees.	Specifies how the state is to utilize the 13.5% coal royalty.
2-38	06-06-97	*MD 680K/29M.PE/1997* Implementation of PD 75/1996 on Basic stipulations of Work Agreements	Elucidation and directions re PD 75.
	1998		
2-39	11-11-98	*Decree of MOME No. 1755 K / MPE /20/1998* Assignment of Task of Performing Technical Evaluation of Reports etc	Directed at General Mining but applies to coal mining also with the Director of Coal assuming the responsibility

Doc #	Date	Title	Description
Other documents			
2-40	11-29-93	The Latest Regulations & Guidelines on coal Mining Investment in Indonesia Tirtosoekotjo, S & Siahaan B, Seminar paper – Coal Mining In Indonesia.	Although not entirely current provides a background to developments in the thinking of the coal contract system.
2-40a	07-28-94	Current Status of Coal Contracts & Future Plans to Promote Foreign Participation in Indonesian Coal Mining. Tirtosoekotjo, S & Siahaan B, ASEAN Coal Markets & Mining Conference	As with previous document, some changes have occurred but mostly still relevant, and illustrates the progression in thinking of the government.
2-40b	11-29-93	Coal Production Sharing Contracts – The Legal Implications. Noormandiri BL & Nurwinakin, TA. - Seminar paper – Coal Mining In Indonesia.	Comments from a purely legal aspect - the author was the head of the legal bureau in DGM at the time.
2-41	June 1995	V.5.- Procedure for Investment & Development of Business V.5.1 Investment Procedure for Mining Authorization (KP) V.5.2 Procedure for Investment In Contract of Work.	Description and flow charts relating to application for mining authorizations or contract of work, including coal.
2-42	09-06-95	The Basic Principles of the New Coal Investment Scheme in Indonesia. Tirtosoekotjo, S et al Energy Indonesia 2010 Conf.	Provides summary of the main features of the coal contracting system.
2-43	12-18-96	Indonesian Coal - The Policy Keynote address to ICMA. Ir Kuntoro Mangkosubroto, Director General of Mines	Refer also to Doc 2-48 form comparison, and to Doc 2-50 for Coal Policy.
2-44	01-15-97	Petrominer, 01/xxiv, p 38 Coal Mining Production Fee to be Included in State Budget.	Production fee (royalty) of 13.5% to go to State not PTBA.
2-45	10-10-98	IMA Statements by Prominents	Response by IMA to criticism of mining industry by political

Doc#	Date	Title	Description
		Petrominer 06, xxv, p32-39.	aspirants.
2-46	10-10-98	Investors Not Interested if PSC concept Applied Petrominer 06, xxv, p39.	Comment on proposal by some parliament members to adopt PSC system from mining. Refer Note in 3.2.a)
2-47	11-11-98	Chung Hua Wins the Case Petrominer 12, XXV, p 51	Only court action in the coal mining sector to date. Refer comment below.
2-48	11-20-98	Indonesian Coal Sector Policy & Issues. Keynote address to ICMA. Ir. Rozik Soetjipto, Director General of Mines.	Refer also to Doc 2-43 form comparison. and to Doc 2 -50 for Coal Policy.
2-49	1998	Coal Investment Scheme and Its Mining company Profile in Indonesia 1998 – Directorate of Coal	Overview of the main features, rights & obligations and management of the coal contract scheme.
Separate Reports			
2-50	11-16-82	Generation I – Coal Cooperation Agreement - between PNTB and (un-named company)	1st Generation CCA
2-51	11-07-97	Generation III – Coal Contract of Work - between DGM and (un-named company)	3rd Generation CCoW
2-52	April '98	Coal Policy for Indonesia	Draft only – not approved
3.2. b Mine Safety & Health			
2-53	-1995	Regulation of MOME 555.K/M/PE/1995 Occupational Safety & Health in General Mining	This is the basic law applying to health & safety in mining in the country. including coal. Reprinted from Petrominer.
3.2. c – Foreign Investment			
2-54	11-09-95	*PD 75 of 1995* Engagement of Expatriate Workers	Law regarding the employment of expatriate workers. Refer also Jan '97 re Minister of Manpower regulation PER.01/1997
2-55	01-10-67	*Law No. 1 of 1967* Foreign Capital Investment	The basic law governing foreign investment in Indonesia.
2-56	Undated	*Elucidation of Law No 1 of 1967*	Self Explanatory
2-57	07-03-68	*Law No. 6 of 1968*	Included here for comparison

[illegible]	Date	Title	[illegible]
		Domestic Investment	with Law No. 1
2-58	Undated	*Elucidation of Law No. 6 of 1968*	Self explanatory
2-59	08-07-70	*Law No. 11 of 1970* Amendment & Supplement to Law No. 1 of 1967 on Foreign Investment	Tax concessions and relief from certain taxes.
2-60	Undated	*Elucidation of Law No. 11 of 1970*	Self explanatory
2-61	08-07-70	*Law No. 12 of 1970* Amendment & Supplement to Law No. 6 of 1970 on Domestic Investment	Tax concessions and relief from certain taxes.
2-62	Undated	*Elucidation of Law No. 12 of 1970*	Self explanatory
2-63	10-23-93	*PD No. 97 of 1993* Procedures of Investment	Generalized procedures for investment for domestic and foreign companies.
2-64	10-23-93	*Decree of Minister for Investment No. 15/SK/1993* Application Procedures for Domestic and foreign Capital Investment.	Self explanatory; refer Doc 2-66
2-65	05-19-94	*GR No. 20 of 1994* Share Ownership in foreign Investment Companies	Establishing 95% permissible foreign ownership principle.
2-66	07-29-94	*Decree of Minister for Investment No. 15/SK/1994* Implementation Regulation of Share Ownership in companies Established under Foreign Capital Investment.	Limits of ownership and certain areas excluded from operation. Refer also Doc 2-64.
2-67	11-16-94	*GR No. 34 of 1994* Tax Facilities for Investment in Certain Fields of Business 7/or in Certain Areas	Self explanatory
2-68	01-10-97	*Min Reg (Manpower) PER. 01/1997* Indonesian Manpower Development Fund.	Manpower fee to be paid by expatriate workers.
SECTION 3.3 - THE FISCAL FRAMEWORK			
Not Divided by TOR Sub-section			
3-01	11-09-94	*Law No. 9 of 1994* on Amendment to Law No. 6 of 1983 on General Provisions &	As per title

Doc #	Date	Title	Description
		Procedures on Taxation.	
3-02	11-09-94	*Law No. 10 of 1994* on Amendment to Law No. 7 of 1983 on Income Tax as amended by Law No. 7	Further amendments to taxation law
3-03	11-09-94	*Law No. 11 of 1994* on Amendment to Law No. 8 of 1983 on Value Added Tax on Goods & Services and Sales Tax on Luxury Goods.	As per title
3-04	07-07-97	*GR 22 of 1997* Types & Depositing of Non-tax State Revenues.	As per title – refer Attachment IIA, Section 3 for mining industry/
Other Documents			
3-05	11-29-93	Coal Mining in Indonesia. – Taxation & Accounting Issues Symposium paper – Coal Mining in Indonesia	General outline of taxation matters relating to coal contracts. Due to the contracts now being more allied with the general taxation laws, some issues do not now apply.
Separate Reports			
3-06	1995	The Newly Amended Tax Laws & Implementing Regulations	Laws No. 9,10,11 & 12 with Elucidation on each law.
3-07	Nov 1996	Indonesia – Law on Income Tax	Law No. 1 and 11 other GRs and PDs issued from 1994 to Nov '96
3-08	1994	Taxation on Mineral Resources Timothy Manring	Paper given at Mining Symposium Indonesia 1994
SECTION 3.4 - ENVIRONMENTAL FRAMEWORK			
4-01	10-23-95	*Kep-51/MENLH/10/1995* Water Discharge Standards	Basic water quality standards for 1995 and 2000; applies to all industries.
Other documents			
4-02	11-29-93	The Status of Environmental Aspects of Mining in Indonesia. Paper by Ir Simatupang. Seminar – Coal Mining in Indonesia	Provides a concise outline of the environmental requirements for securing approval for a mining development permit.
4-03	Sept 1995	Energy & the Environment	Vu-Graphs from presentation –

Doc#	Date	Title	ptio
		Sustainable Development & Environmental Standards. Paper by Nabiel Makarim, BAPEDAL (Indonesian Environment Agency	only provides an overview and of limited use.
4-04	Sept 1995	The Challenge for sustainable Development. Diversification vs Environmental Standards Paper by RM Sayid Budihardjo	Considers the impact of pollution limits and constraints on sustainable development.
4-05	09-28-98	Mining Development & Environmental Management in Indonesia Paper by Dr. Hikman Manaf, Bureau of Environment, MOME.	Deals with environmental planning and regulations, and considers the social and mine closure aspects.
4-06	12-15-98	Mining Companies in East Kalimantan Get a Warning from Local Government. Petrominer 12, XXV, p.57	Example of provincial government involvement in the environmental issues
SECTION 3.5 - INSTITUTIONAL ARRANGEMENTS			
3.5 a) Administrative Structure			
5-01	June 1995	*IV.1 – Ministry of Mines & Energy*	Duties and organization structure of MOME
5-02	June 1995	*Organization & Structure of the Ministry of Mines & Energy*	
5-03	June 1995	*V. – Directorate General of Mines*	Duties and organization structure of DGM
5-04	June 1995	*V.2 Organization Charts or Lists of DGM*	Some names changed but structure remains the same.
3.5 b) – Identify all Government Organisations			
5-05	08-23-86	*GR 37 of 1986*: Transfer of Part of the Government's Functions in the field of Mining to the first Rank Regional Governments	This GR applies only to Category 'C" minerals (refer however to Note 3.5 b).
3.5 c) - Linkage of Coal and Power Sectors			No formal linkage, copies of fuel supply agreements provided however.
Documents			
5-06	10-4-91	Sales Contract – PTBA and Buyer.	PTBA contract to sell royalty coal from private producer.
5-07	+/- 1994	Coal Purchase & Sale for	Self explanatory

Doc #	Date	Title	Description
		Paiton PLTU between State Electric Enterprise PLN & PT XYZ	
5-08	+/- 1994	Coal Purchase Agreement – State Electric Enterprise	Draft agreement proposed by consultant – not used
3.5 d) – Coal & Transportation Sector Links			
		No relevant documents	Refer notes in Section 3.5d)
SECTION 3.6 - SOCIAL ASPECTS			
6-01	11-29-93	Key Commercial Aspects of Compensation for Land Acquisition of Coal Mining Ventures. Paper by Somad – Regulatory Framework Conference, Jakarta	Refer notes in Section 3.6
SECTION 3.7 - STAKEHOLDER INPUT			
7-01	Feb 1999	Eight Generation Contract of Work Submission by the Indonesian Mining Association	Refer to comment in Notes to Section 3.7.
SECTION 3.8 - COAL PRICING			
		No documentation	Refer Note 3.8
SECTION 3.9 - KEY CHANGES IN LEGAL AND REGULATORY FRAMEWORK			
		Refer to Document 5-52 – Draft Coal Policy	Refer Note 3.9

LEGAL AND REGULATORY

STUDY OF THE

INDIAN COAL SECTOR

COUNTRY REPORT

POLAND

COUNTRY PAPER

POLAND

1 Sector Background

1.1 History

There are three main stages which define the history of the Polish coal industry:

- **Stage I** from the end of 19th century to the time of the Republic of Poland accessible and hard coal mines were established. The mines were economic and extraction processes were effective.
- **Stage II** covers the period from the termination of the Second World War till the 1980's during which many mines were constructed with the model not directed at efficiency of extraction but for more social reasons not connected with the coal production. It was financed by the State Budget.
- **Stage III** – covering the last 10 years in which, under extremely complex conditions after the previous period, changes have been introduced to ensure the industry becomes market-driven through economic liberalisation mechanisms.

In 1993 a fundamental organisational change took place in the hard coal mining sector. On 1st March, 1993 the Minister of Industry and Trade, grouped the existing mines – all State-owned enterprises – into Coal Companies, creating 6 Coal Companies operating as joint–stock companies wholly owned by the State Treasury and integrating 49 hard coal mines, and 14 mines operating as single joint stock companies wholly owned by the State Treasury. Further consolidation took place when on 29th June, 1993, 11 of the aforementioned mines were formed into The Katowice Holding Company.

At the end of 1993 a second phase of restructuring for the years 1994-1995 was developed. Its implementation resulted in achieving in 1994 positive accumulation on the sale of coal for the whole mining sector. Five coal companies out of seven had a positive net financial result. At the level of the whole sector however, there appeared a negative net financial result. Further restructuring has not resulted in a great improvement in the financial health of the industry. Excessive production capacity of coal mining sector has resulted in additional costs and maintained inefficient workplaces. These workplace have been inherited after the period of an intensive development of the sector under the central disposition-distribution system. The liquidation process conducted from 1992 was not capable of reducing it to the level of profitable coal sales on domestic and international markets.

The sole and actual reason for the Government's restructuring programme has been the huge financial losses generated by the coal businesses and the rapid accumulation of debt. In order to ensure that these losses do not threaten public finances of the country and to control the generation of the huge financial losses, as well as mitigate the social unrest caused by the difficulties in the industry, further restructuring is necessary.

A reform of the coal mining industry in Poland in 1998 – 2002 was approved by Polish Government on 30th June, 1998. On November 26th, 1998 an Act called "The Adjustment of

Hard Coal Mining to Operation under a Market Economy and the Special Powers and Tasks of Mining Gminas" entered into force.

This Act defines the rules of reform of hard coal mining and the instruments essential for the attainment of profitability by mining enterprises. These rules include:

1. financial restructuring of mining enterprises,
2. liquidation of hard coal mines,
3. employment restructuring in mining enterprises,
4. the special powers and tasks of mining gminas,
5. financing the reform,
6. management in coal companies,
7. supervision of execution of the reform.

Under this reform, the price for coal will be as established by the market and liquidation will be funded by the companies with some assistance from the government. Production capacity will be reduced as will the level of employment.

1.2 Production

Until 1989, hard coal was produced according to a plan in this command economy, regardless of profitability, with an obligation of the mines to exploit also uneconomic seams. During that period, strategic considerations led to maintaining high levels of coal production (over 190 million tons per year during the 1980's) and without importing alternative primary energy. In fact, the coal industry was considered the foundation of the country's strategy to develop a strong heavy industry base with steel heavy chemicals and military complexes dominating industrialisation. Production also was pushed to export in order to earn foreign exchange. Important subsidies were made available to the industry which consistently exhibited costs in excess of sales prices.

Increasing energy prices, which started to trigger energy saving investments, have also contributed to the drop in domestic energy demand. This was compounded by exceptionally mild winters for several years in a row. The export market contraction and policy problems caused exports to decline simultaneously. As a result of all these factors, Polish hard coal production fell back rapidly, reaching slightly over 112 million tons in 1998. Domestic hard coal consumption fell from 162 million tons in 1988 to 99 million tons in 1997. During 1998, domestic consumption fell further to 83 million tons.

Quality of the hard coal in the Upper Silesian basin is relatively high: Over 55% of reserves designated for extraction are of steam coal quality, the remainder metallurgical coal. Over 70% of the coal in site has calorific values higher than 25 MJ/kg. Ash content averages between 6% and 13% in the different seams. Sulphur content ranges up to 3.4%, and averages between 0.45% and 2.5% in different seams. Generally speaking, coal quality improves with deeper seams.

About 40% of the underground labour force are skilled labour,10% are in engineering/technical higher level professions. Only about 50% are unskilled labour (check

numbers). The above ground work employment is grouped into about 70% workers, 12% technicians and engineers, 8% of administrative staff and 8% of industrial services
Peak hard coal production of 201 million tons was obtained with 377,000 employees (533 tons per man-year) in 1979. In the 1980s, when production of hard coal in Poland was over 190 million tons, total employment in the Polish hard coal industry grew to over 430,000 persons. Since 1991, many of the outside services have been separated from the mines and in part, even privatised. Natural attrition in the mines also took its toll as production declined and new recruitment was scaled back or halted altogether. These two factors explain the relatively large further decrease of the labour force to about 206,000 at the end of 1998.

2 The Basic Legal Framework

In 1994, a law was passed providing for the acquisition, management and termination of coal rights both for exploration and exploitation. This Act, called the Geological and Mining Law specifies the terms and conditions under which geological work can be done. It also provides for the development of mineral projects and protection of the environment in connection with the conduct of geological work and extraction of minerals.

Under this Law, a concession is required for prospecting for, or exploration of, mineral deposits; extraction of minerals from deposits; non-reservoir storage of substances in the ground, as well as storage of wastes in underground mining excavations; searching for, and extraction of, the mineral raw materials that are contained in the tailings as a result of mining operations as well as following the processes of mineral enrichment.

A submission for a concession must outline the parties intending to do the work, specify the activities, outline the area sought and the term for which the concession is required. In addition, it must advise of the technical and financial resources available to the party. Principles of the deposit development plan and evaluation of environmental impacts must also be outlined.

A concession terminates when it lapses, is no longer mineable, the holder is liquidated or declares bankruptcy or it is surrendered.

A register is maintained by the Ministry of Environmental Protection, Natural Resources and Forestry.

The deposit development plan that is required will outline in detail the technical methods and financial aspects of development and a mine operations plan will outline the occupational health and safety required on the mine site.

Other legislation also applies to mining in Poland. Laws concerning environmental protection in Poland are still being developed, however, the key law is the Resolution on Environmental Protection of 1980 (together with amendments) and the corresponding decrees. The most significant decrees are:

- Geological and Mining Law – 1994
- Water Law – 1974 (together with the modification)
- Land Development Law – 1994

- Environmental Protection and Development Law – 1980 (together with the modifications)
- Law on the State Supervision of Environment – 1991
- Decree of MOSZNiL (the Minister of Environmental Protection, Natural Resources and Forestry) on air protection against pollution – 1991
- Decree of RM (the Cabinet) on the terms of establishing penalties for violating the requirements to be met by the sewage disposed to waters or into the ground – 1995
- Decree of MOSZNiL on waters classification and the requirements to be met by the sewage disposed to waters or into the ground – 1995
- Law on Wastes – 1997

The charges and penalties for using the environment are paid to the environmental funds, of which the National Fund (National Fund for Environmental Protection and Water Economy) receives 40% and the Voivode Fund – 60%. The sums paid for disposing of saline waters and for certain emissions to the atmosphere are passed on in total to the National Fund of Environmental Protection and Water Economy to be allocated for solving these specific problems.

3. Agencies Supervising Mining

Agencies which supervise the extraction of basic minerals as well as common minerals in areas and which oversee non-reservoir storage of substances and storage of waste in underground workings within Poland are the Chairman of the High Office of Mining, and Directors of district mining offices as well as specialised mining offices.

The High Office of Mining is a central agency of state administration and is subordinate to the Chairman of the Council of Ministers. The Vice-Chairmen and Directors General of the High Office of Mining are appointed and recalled by the Chairman of the Council of Ministers on motion of the Chairman of the High Office of Mining. The directors and deputy directors of the district mining offices are appointed by the Chairman of the High Office of Mining. The Chairman also decides upon the areas which will comprise district offices.

Agencies which supervise the extraction of common minerals and those recovered from tailings are Minister of Environment Protection, Natural Resources and Forestry, and Voivodes.

4 The Fiscal Framework

4.1 Revenue Related Taxes

4.1.1 Income Tax is regulated by the ACT of 15.02.1992 "on the income tax from legal persons".

The Taxpayers, if their seat or their management is within the territory of the Polish Republic, are liable to pay the income tax from the whole of their income irrespectivel of the place of its generation.

Income tax amounts to:

1. from 1/1 to 31/12/97- 38 % of the tax base
2. from 1/1 to 31/12/98 - 36 % of the tax base
3. from 1/1 to 31/12/99 - 34 % of the tax base
4. from 1/1 2000 - 32 % of the tax base

4.1.2 Additional Profits Taxes

Payments to the state budget from the profits of State Treasury Single Person Companies and companies where all stock is the property of the State Treasury are regulated by law. The payments from the profits are to be effected monthly or quarterly as an advance payment and final settlement of accounts shall follow after approval of the financial report. The payments from profits are made to an amount of 15 % of the profit after deduction of the income tax.

4.1.3 The Workplace Social Benefits Fund

The law sets out the rules for creation of the workplace social benefits fund by employers of more than 20 people, for financing of social benefits required for the persons authorised to avail of such fund and for supplementary financing of the workplace social benefits facilities.

4.1.4 Social Insurance Premiums

The social insurance premiums for employees amount to 45 % of the base of the premium rate.

The base of the rate of the premium for insurance of the employees consists of the employee's income both in cash and in nature, inclusive of costs of acquiring of the work and the income tax on natural persons, as remuneration for the work, which comprises any pecuniary dues and pecuniary value of any benefits or their equivalents irrespective of the source of financing of such dues or benefits.

4.1.5 The Labour Fund

The mandatory premiums to the Labour Fund, determined on the amounts which make the base of rate of premiums for the social insurance or old-age pension, to be no less than the lowest salary, are paid by employers or other organisational units, agrarian production co-operatives or co-operatives of farmers' groups, and other persons liable to social insurance or old-age pension provisions. Rates of the premiums are determined by the budget act.

4.1.6 A Fund of Guaranteed Employees' Benefits is created according to the Act of 29.12.1993 "on securing employees' claims in case of employer's insolvency"

The Act regulates the rules and the range of safeguarding of employees' claims in cases when the employer becomes insolvent. The activities of the Fund are supervised and controlled by the Council of the Fund.

4.2 Non-Revenue Related Taxes

4.2.1 Royalties Per Unit Value of Production

A concession holder who extracts a mineral, or extracts a miner raw material from the wastes left after mining operations or mineral enrichment processes, pays an exploitation charge. This charge is assessed in relation to the amount of mineral or mineral raw material extracted. If the mineral extracted needs to be processed prior to being sent to market, the charge is assessed in relation to the amount of improved or enriched raw material.

4.2.2 Sales Tax

The tax on goods and services and the excise tax are regulated by law. The tax rate amounts to 22 %. For the goods and services listed in the enclosure to the law, the tax rate is 7 % and this applies to hard coal. There is 0% on exports.

4.2.3 Property Tax

Local taxes and fees are regulated by law on immovable properties or building structures not permanently affixed to the ground and which property is used. The rate of the immovable property tax is determined by the Commune Council. The rates of the immovable property taxes cannot be less than 50 % of upper limits of the rates.

4.2.4 Salary and Wage Taxes

The natural persons, if resident within the territory of the Polish Republic or if their sojourn in the Polish Republic lasts more than 183 days in the given taxation year, are liable to pay the income irrespective of the place of location of the income sources (unlimited tax liability).

4.2.5 Payroll Taxes

Particular duties and privileges of employers who employ disabled persons.

An employer who employs a minimum of 25 employees must make monthly payments to the National Fund for Rehabilitation of Disabled Persons in an amount equal to the product of half of the average remuneration and the number of employees, which is equivalent to the difference between the employment.

The employers for whom the index of employment of disabled persons amounts to minimum 6 %, are exempted from such payments.

4.2.6 Registration and Stamp fees

Amount of Capital	Fee
Up to 10 000 PLN	3%
Up to 20 000 PLN	300 PLN plus 2% of any surplus over 10 000 PLN
Up to 50 000 PLN	500 PLN plus 1% of any surplus over 20 000 PLN
Over 50 000 PLN	800 PLN plus 0.5% of any surplus over 50 000 PLN (up to the maximum of 5000 PLN)

Stamp Duty:

Amount of Capital	**Duty**
Up to 10 000 PLN	2%
10 000 - 20 000 PLN	200 PLN plus 1% of any surplus over 10 000 PLN
20 000 - 30 000 PLN	300 PLN plus 0.5% of any surplus over 20 000 PLN
Over 30 000 PLN	350 PLN plus 0.1% of any surplus over 30 000 PLN

5 The Environmental Framework

5.1 Required Licences and Permissions

In Poland coal mines must possess the following mining and environmental permissions in order to operate their mining activity:

- The licence of the Minister of Environmental Protection, Natural Resources and Forestry;
- Decision of the Minister of Industry and Trade about the mining programme;
- Permission for waste disposal;
- Permission based on the water law concerning proper water supply, industrial wastes;
- Disposal, rain water disposal, household sewage disposal, etc;
- Decision on emission volume issued by the Voivod Office (if not, the Law governs);
- Decision on disposing of wastes underground issued by the Voivod Office.

5.2 Comparison to the European Community and International Regulations

The European legislation and policy is based on four main rules:

- preventive activities are preferred in relation to the means of damage removal;
- environmental damages should be removed at source;
- the rule "the polluter pays" governs;
- the environmental policy should be integrated with other EU policies.

For the Polish mining industry the law and regulations can be divided into the regulations of direct and indirect influence on the industry. The directives concerning the emission to the atmosphere will have a significant influence on coal markets, yet the influence will be limited at the production stage.

The legislation concerning water and waste will be connected directly to the mining industry, and the regulations concerning dangerous substances will be of direct and indirect importance.

Tightening of the emission standards and an agreement on the sulphur content limit will have the most significant influence on coal and coal products markets.

5.3 Environmental Aspects in Hard Coal Sector

On the Coal production side, four major environmental issues need to be addressed: (I) Saline Water Disposal; (II) Solid Waste Disposal; (III) Subsidence of terrain, and (IV) release of methane gas. Air pollution is also resulting from exhausts of mine-owned power plants. On the demand side, pollution from the combustion of coal is the major source of air pollution in Poland.

In the event of absence of the operator responsible for the damages or of his legal successor, the claims set out in this section are assessable against the State Treasury.

6 Institutional Arrangements

The scale and scope of changes in hard coal mining proposed in the reform program are reason enough for regular, multi-stage supervision of its execution. This will be performed by the Minister of the Economy, the Steering Committee appointed by the Prime Minister and the supervisory boards of companies.

For the period of execution of mining reform, i.e. for 1998-2002, supervision of this execution be organised in the following manner:

6.1 Direct Supervision

Supervision of execution of mining reform is performed by the Minister of the Economy.

A Steering Committee composed from: the Ministry of the Economy, the Ministry of Finance, the Ministry of the State Treasury, the Ministry of Labour and Social Policy, the Ministry of Environmental Protection, Natural Resources and Forestry, the Voivod of Katowice, and the chairman of the self government assembly of the Katowice voivodship. The Steering Committee has the task of examining the execution of the government program "Reform of Hard Coal Mining in Poland in the Years 1998-2002" and submitting semi-annual reports on the course of execution of the program to the Council of Ministers. The Steering Committee also performs advisory functions for the Minister of the Economy.

6.2 Indirect Supervision

Privatisation of coal companies shall be performed by the Minister of the State Treasury. This Ministry oversees the sale of an enterprise carrying on hard coal extraction, raises share capital and redemption of shares of a coal company, or merging of companies. It also covers liquidation of companies, issue of bonds and pledges and liabilities exchanges.

6.3 Management Contracts

For the purpose of evoking greater activity in the field of restructuring and raising the sense of responsibility of presidents and members of the management boards of coal companies for the performance of those companies and associated activities, a system of management contracts will be implemented. One of its basic components is the periodical (quarterly) evaluation of the effects of the activity of the persons referred to above on the basis of clear and transparent evaluation criteria. These will serve to establish the amount of remuneration of presidents and members directing the companies.

7. Social Aspects

7.1 Employment Restructuring

The essential element of the reform of the hard coal mining industry in Poland consists in reconversion of employment and restructuring of a labour market. To ensure that unemployment does not increase because of miners leaving the industry, social protection has been provided through a " Mining Social Package". Within the framework of this Package two types of activities will be undertaken to reduce employment in the coal mining industry. These are *protection activity* – miner' leaves and *activation activity* for the redundant employees on the labour market – both active forms of the employment restructuring.

7.2 Protection Activity

A five-year miners' leave is being introduced in all the mines on voluntary basis. A miner's leave may be assigned on the condition that the employee submits a written declaration that he consents to termination of the employment relationship from the day of ending the miner's leave. During the miners' leave the social allowance is paid to the concerned person. An employee shall be entitled to a miner's leave of five years on the condition of acquiring retirement rights before 1 January 2007. The value of the said social allowance will amount to 75% of the monthly wages calculated as the remuneration for the holiday period.

7.3 Activation activity for the ex- employees of the mines on the labour market

The most complete assistance package is focused on attracting miners to other employment opportunities. A Mining Labour Agency will be functioning at all the mines. The offices will co-operate with specialist services and institutions with respect to activation of the labour market (labour dealing offices, professional advice ones, training institutions, institutions supporting development of small and medium-size companies, agencies of a local development).

The Professional Assistance Offices will present proposals of new employment and the proposal of re-qualification and training to the employees. Three types of mechanisms are available:

- a social benefit: An employee who is interested in a change of workplace will be entitled to a social benefit for 2 years and its value will be 65% of the monthly wages. The payment of the benefit will be terminated the moment an employee takes a new job or economic activity.
- a single lump sum redundancy payment: available to anyone taking a job outside of coal sector within 24 months after termination of the labour contract.

- an unconditional single lump sum redundancy : All the underground employees of the mines are entitled to this payment and from 1 January 1999 it also includes the employees of coal preparation plants.
- bank loan or credit: available to an employee who will be terminated due to conditions of the company.

8 Stakeholders Input

8.1 Mining Companies

The current organisational structure of the hard coal mining industry is:

- 6 Coal Companies – consisting of 38 hard coal mines;
- 1 Coal Holding Company- consisting of 8 hard coal mines;

- individual mines (joint stock companies) wholly owned by State Treasury – 8 hard coal mines (State-owned companies);
- mines under closure (limited liability company) –10 mines.

8.2 Coal Consumers

The most important customer for hard coal continues to be the power industry (about 40% of consumption), the heating industry (household heating & municipalities), and cokeries (steel and town gas. It is envisaged that a decisive drop in export of Polish hard coal will occur in the years 1998-2007. The envisaged export level after the year 2007 at 10 million tons a year can be treated as a reserve for compensating possible fluctuations of sales on a domestic market.

It is also envisaged that in the year 2010 the share of hard coal in electricity production will be at 50%, assuming also that electricity will be exported.

9 Coal Pricing Policy and Price Development

9.1 Associations of Producers

Mining equipment manufacturing represents an important arm of the metal working industry, having had in the past an assured domestic market and good export opportunities in COMECON and developing countries. This industry has suffered a lot from the shrinking domestic demand (declining coal production and lagging investments) and has lost many of its former clients in the east. As a result this industry is slimming down, cutting costs and marketing its products more aggressively. It will benefit from increased co-operation with foreign manufacturers to introduce higher strength materials, better quality products and access to other markets.

9.2 Unions

General Provisions for trade union activities are regulated by the ACT of 23 May 1999 on trade unions. Trade unions in Poland are very strong. In the hard coal sector over 15 trade unions are registered.

9.3 Local Communities

Specific rights of local communities are exercised by creating Local Communities (Segments) by local government, economic bodies, associations, trade unions, economic entities, etc. The Communities established specialist units (companies operating in conformity with Commercial Code) such as development agencies, training centres, entrepreneurship centres to realise common local objectives leading to social – economic development.

The functioning of Local Communities, regional and local development agencies, does not result directly and exclusively from a single organisational-administrative or economic structure. This means that their activity is regional in nature and can be enriched by new partners, resulting from state administration reform, among other things.

9.4 Status of a mining gmina (municipality) and its role in the process of coal industry's reforming

Mining gminas *(smallest divisions of local governments)* should be the most important partners for the coal companies in realisation of the coal industry's reform. These gminas have been adversely affected by the coal mining reforms taking place in Poland. Their revenues have been reduced, workers have been displaced, economic activity has diminished , and a lower standard of living in the area has resulted. For reform to be successful, it must include economic restructuring mechanisms which will create jobs outside the coal industry within these gminas.

9.5 Diversification of economic activity of coal companies

Diversification of economic activity of coal companies is also targeted by the reform. This will include new works and restructuring of the non-production assets of the coal companies. Hopefully this will increase revenue from non-mining activity and put the companies on a sounder financial basis.

LEGAL AND REGULATORY

STUDY OF THE

INDIAN COAL SECTOR

COUNTRY REPORT

RUSSIA

COUNTRY PAPER

RUSSIA

1.0 Russia Background

The recent currency problems (August 1998 crash) and the effect on foreign investment have resulted in many International companies withdrawing from the country, often with major financial losses. As an example of the ongoing currency slide, in March 1998 the exchange rate was 6 Roubles to the US Dollar and by February 1999 it had moved to 23 Roubles.

This has of course appeared to reduce the cost of mining coal from between $15 and $30/t to $5 to $8/t, but the policy now is to price coal in Roubles rather than Dollars.

Much of the coal is mined remotely from export terminals, for example the largest coalfield is the Kuzbass, in Eastern Siberia and which, in 1998, produced over 43% of the country's output. However the cost of transport makes it currently impossible to meet international prices for the export market.

Coal qualities are generally good and cover the full range from high volatile steam coal to coking coals and anthracite. Sulphur and moisture are low, and ash content moderate with the ability to reduce by washing

During the 1990's, output has reduced with the closure of many mines operating in the worst conditions. In 1990 the total output was approximately 395mt, and in 1998 it was 225mt.

Russia has tried to adopt a market economy without any real success, many of the mines are still state owned in practice, with the better mines operating as private mines but often with close connections to the state operated companies.

2.0 Basic Legal Framework Applicable to the Coal Sector

The body controlling the operations of coal mining in Russia is Gosgortechnadzor. This organisation proposes changes in law, issues approvals and exemptions under the law and inspects mines and opencast operations. The Safety Regulations for Coal Mining in Russia are updated approximately every ten years, the current set being dated 1995 and which took effect in 1997.

The laws are prescriptive and often tend to ignore what could be considered good practice and efficient operation. Because the laws are restrictive and in some cases impossible to follow, they are often ignored in practice. The use of specialists and Institutions to develop the legal framework makes the complex legal situation self perpetuating, if only to seek the continuation of employment of those specialists and Institutions, and it stops any practical approach to good mining practice being adopted.

3.0 **Planning:** Most major operations must be approved by Gosgortechnadzor either at local or regional level. Many of these decisions are based on design reports prepared by design Institutions. These designs are for the mine life, and once agreed form the basis of any detailed plan made in the future. These reports include reserves, mining systems, mine layout, the location and schedule of all faces and forms a basis for the life of the mine. Operating cost or lack of capital are not grounds for change.

Because of the fact the law makes it necessary that mines work to a plan which is increasingly old and out-of-date, commercially based mining enterprises find it difficult to operate in an efficacious way.

4.0 Legal Constraints on the Commercial Operations of Mines

4.1 **Centralised Authority:** In Russia the role of the specialist and of design institutions has been enhanced. A mine Director and the Company Directors are required to use these Institutions as the experts in good mining practices, and the Institutions operate in a way that enables them to retain their important role. The emphasis in Russia is put on he fact that the plan is being followed, but it is unclear who is responsible if something goes wrong. At a recent major explosion at a Kuzbass mine when 67 men were killed, the detailed investigation of the events leading up to the explosion was carried out under the chairmanship of the head of the Institution which had also been responsible for the mine design and ventilation layout.

4.2 **Conservation:** There is a different approach to the design and operation of deep mines and opencast operations. Opencast is restricted to working reserves where the cost of production is less than the value of the coal produced, but in deep mines all coal must be extracted provided it is technically feasible and regardless of cost.

This requirement leads to working longwall faces in faulted areas and immediately adjacent to the previous workings. It is not possible for a mine to refuse to work an area because of cost implications. Where coal is to be left because of geological or mining difficulties, the mine director must prepare a document to prove that the coal cannot be worked using available technology but cost is not a factor. Because of this approach, mines must work uneconomic reserves. In a commercial operation, the miner can select which reserves to work and which are to be abandoned. The system in Russia on deep mining does not allow for this. For these reasons the system as it exists is unattractive to private investment. For opencast mining, the conservation laws are less restrictive and is governed by the break-even stripping ratio allowing mining to cease when the cost exceeds the value of the recovered coal. It is unclear why the laws are different for deep mining and opencast. If the principles applying to opencast were applied in the deep mines, these mines would become more efficient and probably safer.

4.3 **Imposition of Technical Measures:** The existing system of centralising control results in the imposition of measures regardless of their technical application or financial consequences. Many mines in the past worked steep seam deposits which were worked by horizon mining techniques, this mining system is still applied even when the seams are relatively level and an inseam method would have operational and commercial benefits. A requirement of mine design is that the ventilation should reach the lowest level of the mine as fresh air and travel up the workings, referred to as the Bramsberg system of ventilation. However as most mines do not develop the lowest operating level first it requires an exemption to ventilate the mine until the lowest level is developed and the mine in consequence operates on a temporary ventilation system under exemption and often for many years.

The ventilation requirements in working areas are very restrictive for modern mining equipment and output levels. A restriction of air velocity to 4m/sec on a longwall face would seem to have been selected with the intention of controlling dust, but modern cutting systems have addressed the dust problem without ventilation restrictions. Russia has suffered a number of major explosions with loss of life on Longwall faces in the last three years. There is no doubt that the ventilation systems in these cases have not been adequate to dilute methane.

4.4 **Safety:** The hours worked by miners in Russia are low comparative to other countries, mainly because of the poor health environment in the mines.

The safety in the mines and in industry is generally poor although there are isolated cases of high and efficient standards. In most cases the management feel little responsibility for employees safety and generally blame the injured party for accidents which occur. Work practices and standards are low because of the lack of respect between workers and employers and the failure of employers to pay wages when they are due. The work practices in Russia are unsuitable for any typical high performance operation and will make any transition to operations with international standards far more difficult to achieve.

5.0 Restraints on Foreign Investment

With low operating costs and good quality reserves, Russia's coal industry should be of interest to an international investor. However, there are many impediments which exist in the Russian system which discourage such investment:

- Lack of fluidity in the local economy with customers failing to pay for coal delivered and the mines failing to pay salaries and suppliers and tax. Bankruptcy procedures are instigated in an uncontrolled manner.
- The economy of Russia has lead to an increase in the amount of coal being traded by barter which in turn means the mine operator suffers from a cash shortage.
- Corruption and organised crime is a major problem in the mining industry. In particular the problem is prevalent in the coal sales with for example organised crime controlling much of the regional sales in Kuzbass.
- Industrial relations are poor. It has become a common practice in Russia to withhold wages from the mine workers which is usually expressed as the workers being owed a number of months of wages. What happens is that for any period the miner receives perhaps 20% of his correct wages, the rest being considered as non payment, it is not uncommon to find workers who are owed the equivalent of 6 months wages. In some cases, miners are paid in part in kind, or have tickets to get essential food at shops attached to and owned by the mines. With this background it is hardly surprising that the miners take matters into their own hands in an attempt to recover the wages they are entitled to receive. With inflation running at a high level the miner when he is paid late is in effect underpaid too.

- The government has withdrawn subsidies from the mines. This has stopped the purchase of new plant and has lead to the deterioration of the mining infrastructure.
- Transport costs are high, and much of the coal is remote from any export facility. The freight rates on the railway system are negotiable.
- Coal quality in situ is generally good, however quality control of the final product is usually poor with coal types being mixed, ash content inconsistent and extraneous material present.
- The safety record of the Russian coal industry is particularly bad. The legal and health and safety requirements in Russia are out-dated and to a large extent ignored. It is likely that any foreign operator would be expected to operate within laws ignored by their Russian competition.
- The laws are highly prescriptive and commonly out of date being based on the past practices of extracting all coal deposits irrespective of cost or quality. There are many legal constraints placed on the mining operations which need updating if the industry is to become international in its approach.
- The tax regime is complex and unclear. Often taxes are not paid and if they are, never paid in full. The tax regime for an international mining company operating in the coal sector has not been determined. Royalties are thought to be about 5% which is paid to the Geological Exploration Department. The tax imposed on a mining operation is unclear but whatever it is can be negotiated away with the Oblast who control the local operation and have powers to exempt taxes. An international company would be expected to pay taxes and then be in competition with Russian operations which do not pay them.
- Traditionally coal is traded as a variable quality and is subjected to high transport costs, particularly when it is required at a port for export. Without doubt there are coals of suitable quality to meet the export market, but the ability to produce and transport to that market at an acceptable price is questionable. Internal markets are frequently traded as barter goods which is clearly a problem for an international operator as it would prove impossible to take profits in cash overseas. Any profit in this system would be in coal which after transport to an overseas customer would be at a loss. There may be some possibility of trading coal for steel which could be taken overseas profitably.
- The existence of design institutions restricts the imposition of international standards of operating a mine.
- At present the selling of coal is in many cases controlled by corruption or organised crime which is a huge risk to a major investment where profit is the motive.
- Getting profits out of Russia could prove difficult unless they are taken in goods.

LEGAL AND REGULATORY

STUDY OF THE

INDIAN COAL SECTOR

COUNTRY REPORT

SOUTH AFRICA

COUNTRY PAPER

SOUTH AFRICA

Part 1: Background and General

1.1. History

The earliest recorded exploitation of coal in South Africa was in the Molteno-Indwe field in the early 1860's, and in Natal in the late 1860's.

It was with the discovery of the Kimberley diamond fields in the 1870's and the Witwatersrand gold fields ten years later that the development of coal mines as a fuel supply to the mines became imperative, leading to the development of coal mines near Vereeniging, on the East Rand and in Northern Natal. The vast Witbank coal field was developed in the 1890's and became the principal source of power for the country's industries, mines and rail system.

1.2 Production and Supply

According to the latest statistics, coal production has increased from 113.08 m/t in 1980 to 221 m/t in 1998. The major market sectors are electricity, exports, synfuels, and local trade.

Coal supplies to Synfuels (the SASOL fuel-from-coal programme, which commenced in the 1950's and has grown to three plants producing fuel, petrochemicals and gas, using world class technology developed in South Africa) and Electricity generation are generally unwashed whereas coal for local trade and exports is beneficiated with an average yield of 65-70%.

Coal from open pit operations makes up 30% of the total. Most of this tonnage is derived from dragline stripping operations. There is one major open pit operation using truck and shovel. There are several small operations also using this technique.

Coal in South Africa is relatively shallow and the majority of underground operations are bord and pillar with continuous miners. Drill and blast sections probably still make up 25% of the underground production. Longwall mining in South Africa contributes a small percentage of underground production due to:

- The high extraction rates that are achieved with bord and pillar mining as a result of depth.
- The high percentage of intra seam sandstone inclusions.
- The significant level of dolerite intrusions within the coalfields.

The majority of South African coal production is medium volatile (22-26%) bituminous coal with relatively low sulphur [<1.3% unwashed or < 0.8% washed]. There are small quantities (<3%) of hard coking coal and anthracite (<2%) produced.

1.3 Coal Geology and Reserves

In South Africa, coal occurs in the Ecca series of the Karoo system, with deposition taking place in the Permian period, 150 - 200 million years ago. The Karoo rocks cover a considerable area of South Africa and several distinct coal fields can be identified. It will be noted that the overwhelming majority of coal produced in South Africa emanates from the Mpumalanga province with the Witbank, Highveld and Eastern Transvaal coalfields. The most recent authoritative determination of coal reserves in South Africa took place in 1987 when it was estimated that 55.3 billion tonnes of extractable coal existed. In this report, the reserve of high grade, non-coking bituminous coal was estimated at about 7 billion tonnes, the largest block being within the Witbank field.

Coal qualities vary widely across the various coalfields, with some reserves being of such low quality (low CV, high ash) that they are used exclusively for local power generation by Eskom, which has pioneered the design of boiler to cope with such fuel. Generally speaking, geological conditions are favourable for mining, especially in the Witbank coalfield, with thick, flat seams at reasonably shallow depths. This has led to the development of several very large opencast mines as dedicated export producers (Rietspruit, Kleinkopje, Atcom) and for local markets (Grootgeluk, Syferfontein). In other fields, as well as in Witbank itself, underground mines use both mechanised and conventional methods, and in a few cases, thin seam mining with handgot methods still exist.

Currently, the coal industry is facing certain critical decisions in the light of the prevailing low prices on the international market. The Witbank coalfield has been exploited for upward of a hundred years and many of the mines are coming to the end of their economic lives. While certain greenfield opportunities still exist (Wonderfontein, Goedgevonden), in general the mining companies are facing the need to develop new mines in more distant coalfields such as the Waterberg, or smaller mines in traditional areas. This may change the economics of coal production in South Africa.

1.4 Export Infrastructure

In the 1970's, in a remarkable partnership between private coal companies and the State controlled railway and harbour administration, the port of Richards Bay was developed as a specialist deep water bulk export port, and the coal companies combined to build the Richards Bay Coal Terminal (RBCT). RBCT was initially designed to handle 12 Mt/a and was expanded in several phases to 24 Mt/a, 44 Mt/a, 53 Mt/a and now 67 Mt/a. RBCT is still a private initiative, controlled by its shareholders (see Figure 1 below), and only shareholders in the terminal may use the facility. It will be readily appreciated that with total exports of about 70 Mt/a and total RBCT of about 67 Mt/a, that access to RBCT capacity is the strategic key to participation in the coal export business in South Africa. Four other alternative facilities exist : Matola terminal and the McMyler appliance in Maputo; and the Bluff appliance and general crane berth in Durban. In 1998, about 1.2 Mt was exported through Maputo and about 1.8 Mt through Durban. The costs of these alternative facilities greatly exceed the cost of RBCT, both in rail tariff and port charges. Moreover, only RBCT can cope with the large cape size vessels, leading to a substantial freight differential being applied.

At the time of development of RBCT, the rail administration (now Spoornet), built a dedicated export line, currently capable of handling several 200 truck trains of 16 kt capacity each day, while trains to the other ports are considerable smaller and fewer (Maputo trains are restricted to 1200 tonnes and only about 6 are allocated in a day). Consideration is being given to the expansion of the coal lines to include the Waterberg coalfield and the upgrading of the Maputo line as part of the Corridor development. If this is done, and if modest further investment is made at the Matola terminal (new stockyard, second shiploader, barges for panamax loading), it is estimated that Matola could cope with annual exports of 5 - 8 Mt.

A further project is also under consideration, the South Dunes Coal Terminal, which would be able to handle +/- 10 Mt/a at a new facility at Richards Bay. While the costs of this project are very high (and hence no decision to proceed has been taken as yet), the advantage would be the use of the Spoornet coal export line and the capability of loading cape size vessels.

1.5 Employment in the Coal Sector

Average annual employment in the coal industry has gone from 80,000 in 1989 to 61,000 in 1996. It should be noted that much of the reduction in staffing can be attributed to a general move by employers to the employment of contractors ("outsourcing"), especially in so-called non-core activities.

Part 2 : Basic Legal Framework

2.1 South African Legal System

The South African legal system is a mix of common law principles (Roman Dutch law, as modified and developed over time) and statute law. Both common law and statutes are subject to judicial comment and after the passing of the Constitution of the Republic of South Africa Act, 1996, there is a justiciable Bill of Rights.

At common law, the basic principle of land ownership is that the owner of the surface owned everything above and below the land. This meant that mineral rights were owned privately, in the first instance by the landowner. The landowner could however sell or lease the mineral rights to another, either a natural person or a company. These legal principles allowed the development of a system of private rights, where the right to prospect was negotiated with the holder of the mineral rights, usually the landowner but later other persons and companies, coupled with an option to purchase the mineral rights. Such a prospecting contract was recognised by the Deeds Registration system, allowing for notarial prospecting contracts to be registered. The practical effect of this system is that once mineral rights have been purchased by a company, they are held by that company indefinitely, until the company is liquidated or the rights are sold again.

Because of this legal effect, the long established mining companies have an inherent advantage over newer entrants, especially foreign companies, as they have, over time, the established companies have built up a portfolio of mineral rights which are not readily accessible to others. This is one aspect that the State proposes to address following the publication of the recent White Paper (see below).

2.2 The Minerals Act, 1991

With the discovery of significant mineral fields, firstly of diamonds in the Northern Cape, then of gold in the Eastern Transvaal and finally, the huge Witwatersrand Gold Field, state legislation to control mining activity was enacted. The model for these laws prior to the Union of South Africa in 1910 was the Transvaal Gold Law of 1908, which remained substantially in force until 1967 when the Mining Rights Act, 1967, was enacted. This in turn was repealed in 1991 by the Minerals Act, 1991, which is the basic law applicable to and regulating mining and prospecting activities in South Africa.

The Minerals Act recognizes the common law rights of landowners and the holders of mineral rights and it is only the holders of mineral rights (or those authorised by the holder) who can prospect and mine for minerals. However, before such prospecting and mining may commence, the holder of the mineral rights is obliged to obtain the necessary prospecting permit (Section 6) and mining authorisation (Section 9) from the State. The responsible State official is the Director: Mineral Development in the province concerned.

The basic thrust of the Minerals Act is the achievement of three objectives : optimal exploitation of mineral reserves; safe and healthy conditions for those engaged in mining; and protection for and effective rehabilitation of the environment (In respect of the last two objectives, the State has in addition enacted further legislation to strengthen controls, namely, the Mine Health and Safety Act, 1996 and the Environmental Conservation Act, 1989.

The objectives of the Act are achieved by a system of permitting and inspection. A new mine development requires a mining authorisation (in terms of Section 9) and the written approval of an Environmental Management Programme which identifies environmental impacts and provides for their remediation (in terms of Section 39) An applicant for a mining authorisation must in terms of Section 9 demonstrate (amongst other things):

- his rights to the minerals concerned.
- the manner in which he intends to exploit the minerals in an optimal manner.
- the methods by which he intends to rehabilitate the land surface.
- his ability to make the necessary provision to mine this mineral and rehabilitate the surface of the land.

Mining operations are subject to inspection by State inspectors and transgressions of the Act and Regulations are penalised by criminal sanctions, including fines and imprisonment. Mining companies are obliged to make financial provision for the cost of rehabilitation and prior to closure of a mine, a long term rehabilitation plan must be agreed.

2.3 The Mine Health and Safety Act

The Act provides for all aspects of the regulation of health and safety on mines, including in certain cases persons other than employees. A Mine Health and Safety Council has been established, consisting of representatives of the State, mine owners and employees, to promote a culture of health and safety in the mining industry, to monitor all aspects of health and safety in mines and to advise the Minister of State accordingly. The Act spells out clearly the responsibilities of the owners and managers of mines and a special inspectorate has been established to ensure that these obligations are complied with. The inspectorate also investigates mine accidents and can recommend criminal prosecution in the event of a breach. The Act has significantly altered the balance between owner and workers and improved the rights of workers and unions in the industry.

2.4 New Initiatives in Legislation

The State has recently published a White Paper spelling out certain objectives in relation to the mining industry and far reaching changes may be made, particularly to the system of privately held mineral rights. The Minister of Minerals and Energy (Mr. Penuel Maduna) has stated his commitment in principle to the concept of all mineral rights being owned by the State, but there are constitutional difficulties in the way of nationalising these rights. It remains to be seen how this will develop over the next few years following the next election and the appointment of a new State President. The White Paper deals in addition with other issues, notably, taxation, participation in ownership and mineral development.

The administrative arrangements for the implementation of the mining laws are dealt with in Part 5. Extensive Regulations have been promulgated under both the Minerals Act and the Mine Health and Safety Act to facilitate the administration of the legislation.

2.5 Basic Conditions of Employment Act, 1998

The mining industry, in common with all other employers, is obliged to offer employment on the basis of certain standard conditions determined in terms of the Basic Conditions of Employment Act, 1998, which has imposed onerous terms on employers with consequent cost increases. Certain industry sectors are negotiating with the State for exemption or partial exemption from the provisions of the Act. With regard to labour regulation in the mining industry generally, there is a considerable degree of rigidity with little freedom to differentiate in particular cases. Labour costs are relatively high and the labour relations regime is weighted in favour of employees.

2.6 Other Legislation

In addition to the two principal mining Acts with their Regulations and the environmental legislation there are a great many other statutes and regulations that affect the mining industry to a greater or lesser extent. Among these are :

Atmospheric Pollution Prevention Act, 1965
Hazardous Substances Act, 1973
Road Traffic Act, 1996
National Monuments Act, 1969
Electricity Act, 1987
Nuclear Energy Act, 1993
Forest Act, 1984
Development Facilitation Act, 1995
Physical Planning Act, 1991
National Parks Act, 1976

Moreover, the various Provincial legislatures have also enacted subordinate legislation that will need to be complied with in the provinces concerned.

There are no specific incentives for foreign investors to enter the mining industry in South Africa. However, the Department of Minerals and Energy encourages participation and would be of assistance to a foreign company.

Part 3 : The Fiscal Framework

3.1 General

A mining company, like any other company in South Africa, is liable for normal tax on its taxable income, pursuant to the Income Tax Act, 1962. Income tax is derived by commencing with gross income and deducting exempt income and allowable deductions. Special deductions for taxation purposes are permitted in the case of mining companies. As such, mining operations are defined as every method or process by which any mineral is won from the soil or from any substance or constituent thereof.

In general mining companies do not pay royalties or lease consideration for the right to mine, since such rights are privately held. Where mining rights are held by the State, a mineral lease may be concluded, but the consideration for the lease of the right to mine would be analogous to the payments to a private holder rather than a fiscal levy.

3.2. Revenue Taxes

3.2.1. Normal tax:

Companies pay tax at a flat rate of 30% (up until March 1999 this was 35%) of taxable income.

3.2.2. Special deductions – Mining companies:

Capital expenditure:

- Mining capital expenditure is allowed as a deduction from income in the year that it is incurred.
- Such expenditure is only allowable once the mine has reached the production stage and the brought forward capital expenditure is also then allowed as a deduction from income.
- However, such deduction is limited to the amount of taxable income derived from that mine, i.e "ring fenced" to mining income on a per mine basis.
- Any excess capital expenditure not claimed, is carried forward and is deemed to be incurred in the next year of assessment.
- For the subsequent years, any capital expenditure incurred is deductible, subject to the "ring fence" limitations.
- Assessed losses brought forward should be taken into account first before the capital expenditure deduction is taken into account.
- Capital expenditure on certain assets such as residential housing, schools, hospitals, recreational facilities and certain railway lines are also classified as capital expenditure but the deduction is phased in over a period of ten years. However, expenditure incurred on the purchase of mineral rights does not rank for capital redemption.
- Only capital expenditure incurred by a mine may be deducted from taxable income of that mine which effectively prevents the deduction of capital expenditure on new mines from taxable income of existing mines.
- A concession now exists whereby 25% of the taxable income from mining can be utilised for the redemption of surplus capital expenditure of all new producing mines of that taxpayer.

Prospecting expenditure:

- Certain prospecting expenditure, such as surveys, boreholes, trenches, pits and other exploratory work preliminary to the establishment of a mine, may be deducted from mining income. However, income must be derived from mining operations to qualify for this deduction.
- Unlike the capital expenditure allowances, if mining income is insufficient to absorb the prospecting expenditure, any excess will be allowed as a deduction from non mining income.

Rehabilitation funds:

- Deductions are granted to persons who are carrying on the trade of mining, in respect of any reasonable amount paid to a company, partnership, association or trust fund for the purpose of rehabilitating disturbances of the land to its original state.
- The receipts and interest accruals in these funds, approved by the Commissioner for Inland Revenue, will be exempt from tax.

3.3. Secondary tax on companies ("STC")

- STC is a tax payable by all companies. It is effectively a dividend tax and the liability is triggered by the declaration of dividends by the company to its shareholders. The liability for STC is determined independently from the liability for normal tax.
- STC is calculated at the rate of 12.5% (previously 25%) on the net amount of dividends declared by any company.

3.4. Value added tax ("VAT")

VAT is levied whenever there is a supply of goods or services in the RSA by a registered vendor in the course of carrying on trade, or where goods or services are imported into the RSA (whether or not a vendor). Taxable supplies are subject to one of two taxes: a standard rate of 14% or zero rate. Exports are zero rated. Registered taxpayers may claim VAT paid by them in acquiring goods and services.

3.5 Regional Services Council Levies ("RSC")

The liability to pay levies falls on specific enterprises. Two separate levies are payable : An establishment levy (Turnover levy) and a services levy (Payroll levy). The rates of the levies vary from region to region, but on average, the following rates apply: Establishment levy : 0.12% of turnover or Services levy 0.3% of payroll

3.6 Import duties and surcharges:

Mining companies, like any other companies, are subject to various import duties and surcharges. These duties are complex but apply to all importers and exporters as determined by the applicable legislation and regulations.

3.7 Transfer duties

Transfer duties are payable by the person who has acquired any fixed property or in whose favour or for whose benefit any interest in or restriction upon the use or disposal of property has been renounced. For natural persons, the rate of duty is dependant on the value of the property acquired, but if the purchaser is a company, there is a flat rate of 10%. If both parties to a transaction are registered for VAT, it is VAT that would be levied in lieu of transfer duty.

3.8 Foreign Exchange

A system for the control of foreign exchange exists in South Africa. In terms of the Regulations, proceeds in foreign currency from an export transaction must be remitted to South Africa and converted into Rand within 7 days of payment.

Part 4: The Environmental Framework

4.1 Introduction

Each existing and new mine in South Africa (as well as any prospecting operation), has to submit a programme to the authorities in which the proponent demonstrates that it has understood the impacts of its activities on the environment and how it will manage these impacts. If this programme is acceptable to the authorities then they will issue a mining authorisation and the company can proceed to mine and rehabilitate the land. If all the commitments are fulfilled, the authorities will issue a closure certificate once these operations are completed which absolves the operator from future liability.

The importance of mining to South Africa in terms of the income generated has always been recognised in law as the state encourages the exploration and exploitation of the country's mineral wealth. Environmental considerations are becoming more important but do little to detract from exploitation on purely economic grounds. The cost of environmental issues remains a small fraction of total costs for most operations. Generally the only impact on a project may be some delays due to the consultation and permitting processes, but this time period often allows mining companies to refine their planning for new operations.

The separation of mineral and surface rights sometimes leads to conflict in South Africa and for this reason most mining companies try to purchase the surface areas on which they propose to perform opencast mining and have surface facilities.

The law gives the owner of the minerals the right to enter up such land and to disturb the surface thereof in order to search for and mine his mineral. The owner of the minerals must however act reasonably and in a manner least injurious to the property of the surface owner.

4.2 Environmental Management Principles in the Minerals Act

The Minerals Act (Act 50 of 1991) deals with the issue of a mining authorisation in Section 9. Section 39 of the Minerals Act deals specifically with the environmental management programme required before operations can commence and describes the process which the proponent must undergo in order for his operation to be acceptable.

In terms of Section 39 the Director: Minerals Development may not approve an Environmental Management Programme unless he consults any department charged with the administration of any law relating to the environment. The Director may also issue a temporary authorisation but these authorisations are becoming increasingly difficult to obtain. He may also require a full environmental impact assessment (EIA).

In terms of Section 38 of the Minerals Act the rehabilitation of a mine has to be performed as an integral part of any mining or prospecting programme and simultaneously with such operations unless determined otherwise in writing by the Director: Mineral Development.

The proponent of a mining or prospecting operation has to complete an Environmental Management Programme Report (EMPR). In order to assist mining proponents an Aidé Memoiré has been compiled in order to guide the compilation of the EMPR's in accordance with acceptable procedures and means. The format is such that both new and operational mines can be dealt with. The EMPR was designed to condense all the information required by a number of different government departments into one document. It also makes use of the principle of having a lead agent administering the process with the Department of Minerals and Energy performing this role. The EMPR process is administered by the Department of Minerals and Energy (DME) through its regional offices where the Directorate of Minerals Development deals with these issues.

4.3. Financial Provisions

The Director: Minerals Development has to be satisfied that the applicant for a mining authorisation has the ability and can make the necessary provision for rehabilitation of these disturbances caused by mining (Section 9 (c) and (e) of the Minerals Act). This provision requires that this money be placed in:

- A separate Trust fund – the route preferred by most mining companies.
- With the Department of Minerals and Energy as a deposit in an account.
- In the form of a financial guarantee by an acceptable financial institution.

The DME has a stated policy whereby each mine must have sufficient money provided for at any one time to pay for the closure of its operations. Contributions to these funds are tax deductible. The Department of Finance has a policy whereby the mining industry has to provide for closure costs at a rate proportional to the number of years remaining until expected closure and the closure costs anticipated at that time. This method is the more common practice. The quantity of provision must be acceptable to the Director: Minerals Development. Ongoing rehabilitation costs must be paid for out of working costs. The quantum to be provided for must be updated annually with the help of an expert.

4.4. Standards for Surface Rehabilitation

The area which will be mined by opencast has to be analysed in detail for its land capability. Current guidelines classify the pre-mining land into four capability classes based on soils and topography. The rehabilitated surface should have the same areas, or higher, of each land capability. The classes* are:

- Arable land (soils thicker than 0,75m, not erodible).
- Grazing land (soils thicker than 0,25m, capably of supporting native grass).
- Wetland (soils with the horizon gleyed for more than 50% of the volume and a diagnostic organic horizon at surface).

- Wilderness (all remaining land).

* ***Note the criteria have been greatly simplified.***

4.5 Other Relevant Legislation concerning the Environment

The Environmental Conservation Act (Act 73 of 1989) allows the Minister to make regulations concerning activities which can have a negative impact on the environment and to require proponents to submit environmental impact reports including full Environmental Impact Assessments (EIA's). Thus far mining has been excluded from these named activities as it is regulated under the EMPR system. The National Environmental Management Act was promulgated on the 29th January 1999 and aims to co-ordinate all environmental laws. It charges each state department to compile plans on how it is going to manage the environmental impacts for operations under its jurisdiction.· The DME is currently redrafting the EMPR guidelines including the Aidé Memoiré so that this process will meet all requirements of other state departments and control for the Minerals Industry will still rest with the DME. After this process is completed there should be no additional requirements for an EIA. However, the provisions of the Act relating to access to information and enforcement of the provisions relating to environmental management remain applicable to the mining industry. The industry will need to develop an approach to cope with the fresh demands made by this Act.

Section 20 of the Environmental Conservation Act (ECA) deals with waste disposal. This process is administered by the Department of Water Affairs and Forestry. At present mining waste is excluded from this classification and is handled under regulations promulgated in terms of the Minerals Act with the Department of Minerals and Energy administering these sites. The disposal of domestic and industrial waste does however, have to be managed in terms of the ECA.

The Water Act (Act 54 of 1956) regulates water management on a mine. Water found within a mine may be pumped out and used for the operations of a mine or purposes connected with it, provided that a permit has been issued in terms of Section 12B. Section 26 of the Act allows for regulations to be made for water pollution control, currently contained in Government Notice GN287 of 20 February 1970 and the operator of a mine must furnish the Director General of the Department of Water Affairs and Forestry with a certain information and it obligates the operator to perform a number of tasks. In terms of Section 12 the use of greater than 150m^3/day of water requires a permit and terms of Section 21 water may not be discharged from a mine unless it has been purified and a permit issued.

On 20th August 1998 the National Water Act was promulgated. This Act fundamentally changes the way in which water issues are managed from a system which was geared to agriculture and where surface ownership conferred water rights to a system where all water is owned by the state and any use of it has to be authorised and paid for. Sections 12B and 21 of the old Water Act presently still apply until October 1999.

The Atmospheric Pollution Prevention Act (Act 45 of 1965) gives the Government Mining Engineer the functions of a chief air pollution control officer in matters relating to mines. The Minerals Act also deals with the covering of dumps to prevent the dissemination of pollution such as dust, sand, smoke or fumes. Where coal is subjected to any operations which may generate dust the liberation of dust must be effectively controlled.

Recently more and more provisions of the constitution are being involved with environmental matters. In terms of Section 24 of the constitution everyone has a right to:

- An environment which is not harmful to their health or well-being.
- Have the environment protected for present and future generations.

4.6. Quality Standards

The Aide Memoire for the EMPR specifies that the principle standard of reclamation is BATNEEC which is defined as "Best (Proven) Available Technology Not Entailing

Excessive Cost." The law and its application allow for site specific application of environmental solutions based on actual impacts. There is a long term consideration for the safety of an operating and closed mine with respect to shaft, highwalls etc. but each individual case is handled on its own merit.

4.7. Consultation with Interested and Affected Parties

The current government guidelines merely require the proponent to list Interested and Affected Parties (I&AP's). The Director: Minerals Development then presumably has to decide on whether their interests have been taken into account. In practice the mining proponent has to prove that he has discussed the development with all parties which can reasonably be expected to be affected by the project and that any reasonable requests and suggestions from their side have been considered. The extent of the consultation is totally dependent on the project under consideration. In practice there have been very few claims by indigenous people based on cultural or historical grounds. There are some claims with regard to mineral and surface right ownership. Surface right claims are being handled by a special Land Claims court. The principle of multiple land uses is well accepted in South Africa.

4.8 Cumulative Impacts

As most of the local coal mining activity in South Africa now occurs in the Witbank area the cumulative impact on water quality in this region is significant. The legal system as defined in the old Water Act listed discharge criteria for water quality but it failed to deal effectively with cumulative loads of dissolved salts. This has led to the development of specific catchment management plans in order to ensure long term acceptable water qualities. Final methods to deal with this problem will be a combination of pollution prevention, containment and treatment techniques. Water treatment is and will be a combination of passive and active systems. A regulated release of saline water is taking place in this region in a similar fashion to that occurring in the Hunter Valley in Australia.

4.9 Discard and Residue Dumps.

The Department of Minerals and Energy regulates the disposal of waste and issues permits to the mines stipulating how this must be done. The regulators encourage the disposal of waste into old mine workings. In order to achieve consistency in the management of these deposits the government and industry have drawn up a standard "Code of Practice for Mine Residue" which is issued by the S.A. Bureau of Standards.

Deposits are classified as having a low, medium or high hazard potential and based on the hazard level the DME requires audits of these deposits at prescribed intervals of 1 to 5 years. Medium and high hazard facilities need to be inspected by professional engineers. The ISO 14000 principle of continual improvement is incorporated into this Code of Practice.

Part 5: Administrative Arrangements

The Minerals Act and associated legislation is administered by the Department of Minerals and Energy.

5.1. Administrative procedure for prospecting and mining authorisations

The DME has a regional office with a Director: Mineral Development in all the provinces of the RSA.

If an applicant for a prospecting or mining authorisation is not the holder of the rights to minerals, he will have to obtain the consent of the mineral rights holder to such prospecting or mining prior to the application being lodged with the relevant Director: Mineral Development. The negotiations with the holder of the mineral rights, as well as with the landowner regarding surface usage, are dealt with under common law as mentioned in the section on the Legal Framework.

When an application is made for a prospecting or mining authorisation in respect of State land, the DME will first consult the custodian of such land, usually the Department of Public Works, to determine whether the granting of prospecting rights will interfere with any surface development on the land concerned. If land is involved which was previously owned by the disbanded South African Development Trust (SADT) or land held in trust for a tribe or community, the Department of Land Affairs and the occupiers of such land or the tribe or community are consulted by DME.

Furthermore, the Minerals Act, 1991, provides that the holder of a prospecting permit or mining authorisation shall submit an environmental management programme (EMP) in respect of the surface of land concerned in prospecting or mining operations or such intended operations, to the Director: Mineral Development for his approval, and no such operations shall be commenced with before obtaining such approval. To ensure that all aspects of the environment are brought into consideration, section 39 of the Act stipulates that before the Director: Mineral Development approves any EMP he has to consult with each department, including provincial departments, charged with the administration of any law which relates to any matter affecting the environment. Approval of an EMP may take a considerable period of time and the legislation does empower the granting of a temporary permission to proceed with prospecting or mining operations. Such permission will, however, only be granted after consultation with the other departments and under stringent conditions. The consultation with other State departments, such as Water Affairs, Environment, and Agriculture is managed by DME, although the applicant can intervene in the process.

The Constitution of South Africa has determined mining and mineral development to be a national (as opposed to provincial) issue and hence the Provincial departments are consulted but final decisions are taken at the State level.

5.2. State and Private Organisations Linked to Coal Sector

As explained above, the primary State department through which the mining industry has dealings with the Government is the Department of Minerals and Energy and it is that department which liaises with other departments of State.

However, in some cases the mining industry must deal directly with other departments for certain permits and authorisations, most especially in relation to water use (Department of Water Affairs and Forestry). With the implementation of the National Water Act, 1998, this system of permitting will be broadened and the industry will deal even more with DWAF directly.

Other State departments with which the industry deals direct are Finance (Inland Revenue) : fiscal matters, State aid; Trade and Industry : import and export permits;
and Transport : rail traffic allocations.

The South African Chamber of Mines was established shortly after the discovery of the Witwatersrand gold field as a body to represent the industry in the resolution of common problems. The Chamber of Mines acted as a single voice for the industry for many years in the fields of research, labour recruitment, government liaison, and union negotiations. In recent years, however, especially in regard to labour relations and wage negotiations, the mining companies have dealt separately with the unions. The Chamber has played a key role in the implementation of the Mine Health and Safety Act and represents the industry on the Mine Health and Safety Council.

Eskom, a parastatal organisation, is responsible for the generation and distribution of electricity in South Africa, apart from two or three small municipal power stations. There is 31 000 mw of installed coal-fired capacity which represents more than 90% of the country's total generating capacity. The electricity sector consumed 83 million tons of coal in 1998 with the majority of the coal being supplied by Amcoal and Ingwe.

All Eskom's coal-fired generating capacity is in the form of large mine-mouth power stations with a dedicated fuel supply based on long-term (usually 40 years) supply contracts. These contracts are of two types: *Production cost* plus a return on investment to the mining company or *Fixed Prices* plus a fixed escalation. The Eskom long term contracts give the mining companies a stable income supply which counteracts the cyclical income from exports.

Coal is not used directly as a transport fuel in South Africa. However, through the Synfuel programme coal generated transport fuels represent some 30% of the total. This percentage is diminishing as it is extremely unlikely that any new synfuel capacity will be introduced in the future.

The transport of coal in South Africa is predominately handled by the State controlled rail network. There is a dedicated rail link between the Coal fields and Richards Bay, South Africa's main export terminal

PART 6: SOCIAL ASPECTS

As part of the permitting process and the approval of the EMP for a new mine, it is incumbent on the mine owner to identify all Interested and Affected Parties who may have an interest in the development of the mine or be affected by it. A process of consultation with these parties takes place and the mine design as well as the environmental management process needs to take the results of this consultation into account.

In general terms, the I&AP's will be Landowners on whose land the mine will be developed and those nearby the development. (It should be noted that in terms of the mineral laws, discussed in Part 2 above, the holder of the mineral rights is entitled to mine for his minerals, without necessarily owning the surface, but as a general rule, mining companies will purchase the land most directly affected). Others will be local authorities. Eskom, State departments, Provincial departments and local organizations such as the Chamber of Commerce, ratepayers associations etc.

In the Report on the Environment and the Management Programme, the prospective mine owner is also required to identify the economic effects of the proposed mine and the benefits that will flow from it. There are no formal measures for the identification or for monitoring subsequent developments, and the mine is compelled only to control and report on the physical environmental effects (water pollution etc.). It is the normal practice of the Department of Water Affairs to insist on a programme of water quality monitoring both during and after cessation of mining, in which water quality is measured against the SABS 241 potability standard. At mine closure, the mine owner will be required to rehabilitate the property according to the standard and methods stipulated in the EMP, which would have been approved prior to final mining authority being granted.

Since mineral rights are privately held, there is usually no ongoing payment to be made for mining rights, and the local community would benefit only to the extent that mineral rights or surface property were purchased from local inhabitants. In the rare case that a mine is developed exclusively on State land on which a mineral lease is negotiated, the royalty payable would be paid direct to the State Exchequer and the funds would be disbursed at National level. No formula exists for the distribution of part of such royalty to the local authority, or even to the Provincial government.

Part 7: Key Stakeholders

Coal companies

The two giants of the local coal industry are Amcoal and Ingwe, both which hold large sales contracts with Eskom. Both companies are expanding internationally, with Ingwe concentrating on Australia, while Amcoal is developing projects in Columbia.
The third largest company is Duiker which has large sales but no long term position with Eskom. There are also many small producers and traders operating in South Africa, mostly dealing in the local market thorough supply to existing exporters while others trade on their own account.

Consumers/Importers

By far the biggest consumer is Eskom, the South African electricity producer which consumed 83 million tons in 1998. The major markets for South African exports are power utilities around the world. The major countries that import South African coal are the European Union, Japan, Korea, Hong Kong, Israel, and China/Taiwan. Sasol mines coal for its own use in the production of synfuels and chemicals, while Iscor Mining does the same in the production of steel (and it is also an importer of coking coal). There are numerous local consumers mainly in the paper and chemical industries, and in the ferro-metal production industries.

Coal is still used by a significant portion of the population as a fuel for cooking and a source of home heating.

Unions

The major union operating in the coal sector is the National Union of Mineworkers (NUM). Other unions that are active are Chemical Workers Union (CWU), United Workers Union of South Africa (UWUSA) and the Mine Workers Union (MWU). There are in addition various other small unions. More than 90% of the labour force is unionised although no closed shop practice exists. It is difficult to gauge the extent of unionization within the small producers and the contract miners.

Wage negotiations take place on a yearly base either at mine level or through the Chamber of Mines for those companies that use the collective bargaining approach. There is an established legal framework that governs labour relations, conditions of employment negotiations and industrial action. In recent years the industrial climate has been reasonably peaceful, largely due to the shrinking of the workforce. which has placed the workers and their representatives in a relatively weaker bargaining position.

Transporters

The major transporter of coal is Spoornet, the State controlled rail network. There are numerous privately owned road transporters.

Local communities

Historically South African mining companies supplied housing, at nominal rentals to its white employees and accommodation to its migrant labour (essentially its black employees). In the seventies this started to change with housing being supplied across the board within the coal companies. Over the last ten years there has been a move away from this "company housing" philosophy. What this means is that the term "local communities" means different things at different mines.

Whatever form the local community takes it has very little input into the business of the mining company. The communities interests are usually represented by the regional offices of the Department of Mineral and Energy Affairs (DMEA) as far as environmental issues are concerned or by the Union on Social Issues.

NGO's

There is no significant input by NGO's, although there is an increasing trend for the involvement of environmental activist organisations to become involved in mine developments.

Producer Organisations

There are three Producer Associations:

i) The Chamber of Mines (CoM).
This organisation started with the development of the gold mining industry in Johannesburg. It is today still dominated by the gold mining companies, although most of the major coal producers are members. They are involved in some collective bargaining, interface of the mining industry with government, safety monitoring, mining and health and safety research, and mine qualifications.

ii) The Richards Bay Coal Terminal Company
This company operates the Coal Terminal at Richards Bay on behalf of its owners, the coal producers. The size of a producer's shareholding in RBCT gives the producer a pro-rata share of the Terminal's throughput capacity.

iii) The Transvaal Coal Owners Association (TCOA)
This organisation was established in 1923 to represent all coal producers but today is responsible for servicing certain export contracts on behalf of its remaining members (Amcoal and Ingwe)

Part 8: Coal Pricing

Coal pricing is no longer regulated by the State in South Africa. Export pricing is determined largely in the competitive framework that exists between the major exporters (Australia, Indonesia, Venezuela, Colombia) in respect of the various markets (Pacific Rim or Europe, steam coal or metallurgical coal). Inland pricing for normal consumers is likewise determined on a supply and demand basis, while special arrangements exist in respect of coal supply to Eskom power stations, where as a rule, captive collieries have long term contracts with particular pricing provisions.

LEGAL AND REGULATORY
STUDY OF THE
INDIAN COAL SECTOR

COUNTRY REPORT

UNITED KINGDOM

COUNTRY PAPER

UNITED KINGDOM

Part 1: Sector Background

1.1 History

1.1.1 Coal has been mined in Great Britain for at least two thousand years. Initially, working was generally of coal outcrops. Annual coal production increased from perhaps 3 million tonnes in 1700 to about 15 million tonnes by 1800 and to about 60 million tonnes by 1850. From the late 1890s to the late 1950s, the British coal industry generally produced over 200 million tonnes of coal per year. It peaked at about 290 million tonnes in 1913, which represented nearly a quarter of World production in that year.

1.1.2 Ownership of most unworked coal in Great Britain was vested in the State in 1942 and the coal mining industry was nationalised in 1947, when virtually all unworked coal and mining operations in the UK vested in the National Coal Board (subsequently British Coal). Since that date, although the trend has been for UK energy consumption to increase, coal production has declined. This has been due principally to the displacement of coal by other sources of energy, such as oil and natural gas, in its traditional markets of domestic heating and industrial use and the disappearance of some markets, notably railways and gas manufacture. A key factor has also been the privatisation of the electricity industry. The main market for coal in the UK today is electricity generation.

1.1.3 Over recent years, opencast mining production has formed an increasing proportion of total UK production - although output is now dropping back due to the increasing unwillingness of the Planning Authorities to grant planning permission for new opencast sites.

1.1.4 In 1984/85, British Coal's operations were severely disrupted by a strike which lasted for nearly a year. The majority of British Coal's collieries were idle for some or all of that period.

1.1.5 There has been a significant contraction of the coal industry in the UK since 1985, aimed at balancing supply and demand. At the end of 1985/86, British Coal operated 133 collieries and colliery output in that year was 88.4 million tonnes of coal out of a total British Coal output of 102.5 million tonnes (the balance being opencast output). By the end of 1992/93, British Coal had 50 operating collieries and colliery output in that year was 61.8 million tonnes out of a total British Coal output of 76.8 million tonnes.

1.1.6 In October 1992, the Secretary of State for Trade and Industry instigated a wide-ranging review of the prospects for the coal industry. The results of the review were set out in the White Paper "The Prospects for Coal: Conclusions of the Government's Coal Review" of March 1993, which, inter alia, confirmed HM Government's intention to privatise British Coal. In 1994, British Coal was privatised, its mining operations being disposed of in a series of trade sales. Unworked coal was transferred to the Coal Authority.

1.2 Geology

1.2.1 Nearly all coal production in Great Britain is from seams of Carboniferous age. Bituminous or sub-bituminous coal is locally present in other formations including those of Jurassic and Tertiary ages. Seams are being exploited at many different horizons. The Coal Measures outcrop in most coalfields, but large areas suitable for deep mining are concealed by younger rocks. Some of the coalfields also extend offshore. There is considerable geological variation both within and between coalfields, affecting seam thickness, quality and continuity.

1.3 Production by Mining Method and Coal Type.

1.3.1 Most coal in the UK - about 75% - is produced from deep mines. The predominant method is mechanised long wall extraction. The coal is cut using shearers and power loaded to armoured face conveyers, with roof support at the face being provided by hydraulic chocks. Retreat mining is used where possible. There are some locations where, for special reasons, short wall working is employed using continuous miners - eg Ellington in the North East of England where the workings are under the North Sea and where total extraction by long wall methods is not permitted because workings are within 110 metres of the sea bed.

1.3.2 Roof support in roadways is increasingly provided by rockbolting, using US and Australian technology and methods.

1.3.3 Well over 90% of the coal produced is bituminous and goes for steam raising, the bulk for electricity generation although there are still some industrial customers (eg bricks, cement works), and also a small domestic market. Small volumes of non-bituminous (anthracite) coal are produced from opencast sites in Wales and are supplied to the domestic market. Metallurgical qualities are produced for British Steel and for the coke ovens of Coal Products Ltd. This market is now small, and reducing because British Steel and Coal Products are relying increasingly on imports.

1.4 Employment

1.4.1 There are now fewer than 10,000 mineworkers in the UK, and the number is continuing to reduce. In addition, there may be around 1,500 jobs in opencasting. These are (for the most part) with the civil engineering contractors who undertake opencast operations on a sub-contracted basis on behalf of the major producers (eg RJB Mining). There are, in addition, a number of small companies who specialise in opencast mining on their own account.

1.4.2 Indirect employment - eg with the mining equipment sector and with consultancies - is probably no more than 5,000 in total.

1.4.3 Mining employment is still relatively well paid, although is no longer at the top of the pay league. Typically, a face worker might expect to earn between £20,000-£30,000 per annum, depending on the level of bonuses available at his mine. The industry remains virtually 100% unionised, with membership split between the Union of Democratic Mineworkers (the Nottingham and Midlands Coalfields) and the National Union of Mineworkers (elsewhere). So far, the major coal producers have not recognised the unions for pay bargaining purposes, but this may change with new legislation in 2000.

PART 2: THE BASIC LEGAL FRAMEWORK

2.1 Law Providing for the Acquisition, Management and Termination of Coal Rights Both for Exploration and Exploitation.

2.1.1 In the UK, as a general rule, minerals form part of the land in which they are embedded and prima facie the surface owner also owns the minerals within and under his land. There are exceptions to this rule and coal is one of them.

2.1.2 A convenient starting point is the Coal (Registration of Ownership) Act 1937 and the Coal Act 1938 which created the Coal Commission. These provided the machinery for the unification of coal royalties. The Coal Industry Nationalisation Act 1946 nationalised the mining industry. The National Coal Board (NCB) was created and in it was vested the ownership of virtually all coal, mines of coal and colliery concerns in the U.K. as well as the interests held by the Coal Commission. As a consequence, private interests that formerly existed in coal and certain associated minerals, whether lessor, lessee or working proprietor, disappeared. The 1946 Act also gave the NCB the exclusive right to work and get the coal (with minor exceptions) as well as exclusive rights to search for and bore for coal. The NCB changed its name to British Coal Corporation in 1987.

2.1.3 In 1994 the Government took steps to privatise the coal mining industry in the United Kingdom. The Coal Industry Act 1994 ("the 1994 Act") provided for the re-organisation of the coal industry.

2.1.4 Sections 1, 7 and 12 of the 1994 Act provided for the establishment and functions of a new regulatory body, the Coal Authority ("the Authority"), to which was transferred the ownership of all unworked coal and coal mines which had hitherto been vested in British Coal. The Authority is prohibited from carrying on coal mining operations itself for commercial purposes.

2.1.5 The intention of the Government was that the Authority's prime focus should be on facilitating coal mining operations by licensing such operations, by granting interests and rights in unworked coal, coal mines and land, and by providing access to information.

2.1.6 The 1994 Act provides, by section 25, that after the restructuring date, coal may be worked only under and in accordance with a licence under Part II of the 1994 Act. Section 26 empowers the Authority to grant such licences.

2.1.7 The Government's original intention was to divide British Coals's principal mining assets into five "packages" - three in England, one in Scotland and one in Wales - and that each of these packages should be held by one of five individual successor companies. In the event, one bidder successfully bid for the three English packages and the Secretary of State vested all those packages in one successor company rather than three. In December 1994 the Secretary of State made three restructuring schemes which transferred the packages of property, rights and liabilities of British Coal to "successor companies" which were wholly owned by the Crown. The rights transferred to those successor companies included the Part II licences and leases and conditional licences and options for leases referred to above. From June to December 1994 the Secretary of State conducted a competitive sales process to find purchasers for those companies.

2.1.8 From the Coal Authority report and accounts for 1997/98 there were a total of 994

- licences/agreements in grant at March 31,1998.

2.1.9 Operators wishing to carry on coal mining operations in respect of coal not already in lease/licence, must apply to the Authority for a statutory licence under Part II of the 1994 Act. Additionally they require a proprietary right to exploit the coal. In most cases this will be achieved by obtaining a lease from the Authority. Operators must also secure any surface access rights from the surface owner, planning permission and any other consents, *e.g.* relating to water discharge. Exploration for coal is now a matter for operators. It is for them to search and bore for coal having first secured relevant permissions and consents.

2.2 Laws/Regulations: Coal Industry Act, for Health & Safety, and Coal Rights Administration

2.2.1 The Coal Industry Act establishes the Coal Authority and outlines its functions and responsibilities:

- property function: relates both to surface property and also to the Authority's interests in unworked coal and other minerals.
- licencing function: relates to its duty to licence coal mining operations and promotion of competition for licences.
- subsidence function and associated duties: relates to overseeing mitigation of subsidence claims

information and associated duties: this relates to publicising its licencing powers and duties, publish methods of applications for licences, publication of model licences, and the maintenance of a registry for licences (i.e. transfers, revocations, enforcement etc.)

2.3 Health and Safety - The Regulatory Framework

2.3.1 The Health and Safety at Work etc. Act 1974 (the "HSW Act") sets out the regulatory framework for health and safety and the general duties on employers and others. Under the HSW Act, the Health and Safety Commission has overall responsibility for the regulation of health and safety at work.

2.3.2 The enforcement of health and safety law is the responsibility of the Health and Safety Executive ("HSE"). HM Inspectorate of Mines ("HMIM") is the division of HSE which undertakes inspection and enforcement in the underground coal industry, on behalf of the HSE. HSE's Field Operations Division has responsibility for opencast sites.

2.3.3 Health and safety legislation and guidance. Health and safety regulations are made by the Secretary of State for Employment acting on proposals from the Health and Safety Commission. The HSC often gives practical guidance on methods of meeting the requirements in regulations in Approved Codes of Practice ("ACoPs"). These have a specific legal status under the HSW Act. The HSC and the HSE also publish other guidance. While such guidance does not have the same status as ACoPs, it may nevertheless be taken as setting the standards with which employers could reasonably be expected to comply.

2.3.4 Key legal requirements. The general duties imposed on an employer by the HSW Act include the duties to ensure, so far as it is reasonably practicable, the health, safety and welfare at work of all its employees, and to conduct its undertaking in such a way as to ensure, so far as it is reasonably practicable, that persons not in its employment who may be affected are not exposed to risks to their health and safety.

2.3.5 Additional requirements have also been imposed by the Management of Health and Safety at Work Regulations 1992, made under the HSW Act, which largely implement European Directive 891391/EEC (the "Framework Directive"). Among the requirements of the regulations is a duty on an employer to undertake risk assessment. There are a number of items of health and safety legislation specific to the mining industry. In respect of collieries, the Mines and Quarries Act 1954 (the "MQA") and the Management and Administration of Safety and Health at Mines Regulations 1993 (the "MASHAM Regulations") are particularly relevant.

2.4 Foreign Investment Requirements/Incentives

2.4.1 The coal industry in the UK is, in World terms, a high cost marginal producer and in long-term decline. It is no longer a "commanding height" of the UK economy; and on the privatisation of British Coal in 1994, little interest was shown by the major international mining companies.

2.4.2 There are no legal or regulatory impediments to foreign investment in the UK industry; but in the circumstances just mentioned, no significant investment has been made or is in prospect.

2.4.3 The offer of incentives to foreign investors would, in principle, raise issues under UK competition law (inviting objections from existing UK producers) and State Aids issues with the UK's European Union partners. Germany, France, Spain and Belgium are all "managing down" their coal industries, and would be likely to oppose such incentives. In any event, no conceivable regime of incentives would be likely to attract foreign investment to the UK industry, and none are on offer.

PART 3: THE FISCAL FRAMEWORK

3.1 Revenue Related Taxes

3.1.1 Income Taxes. The profits of coal mining enterprises in the UK are subject to Corporation Tax (see below). Income Tax is levied only on individuals and partnerships. It is relevant in the present context, therefore, only in relation to the taxation of wages, salaries and bonuses of those employed in the industry, and taxation of dividends distributed to shareholders. The rate of tax ranges from 10% to 40%, depending on the income bands of the tax payer.

3.1.2 Corporation Tax. Introduced by the Finance Act, 1965 and applies to all bodies corporate resident in the UK. It is levied on the profits of a company made up of both income profits (computed according to Income Tax principles) and capital profits (assessed in accordance with Capital Gains Tax rules). The current rate of tax is 30%, with a small company rate of 20%. Dividends are not allowable against profits for Corporation Tax purposes, but there were until April, 1999, provisions to allow shareholders to recover part of the Income Tax deducted from dividends, by imputing to them a proportion of the Corporation Tax paid by the company making the distribution. This avoided what would otherwise have amounted to double taxation of distributed profits. These arrangements have now been terminated, so that shareholders must pay Income Tax at the full applicable rate. Corporation Tax applies to mining companies resident in the UK in the same way as all other companies. In particular:-

(a) there are no special rules for the computations of profits (eg depletion allowances);

(b) the same rules apply in relation to carrying losses forward or back to set off against profits of other years. (NB the tax losses accumulated by British Coal were surrendered to HMG on privatisation);

(c) capital allowances are available on substantially the same basis, although there are detailed differences - Capital Allowance Act 1990, Part IV (Mineral Extraction). To obtain an allowance, the taxpayer must incur "qualifying expenditures" in the year for which the allowance is claimed - that is, capital expenditure on:
  - mineral exploration and access;
  - the acquisition of a mineral asset;
  - construction of works which will have no value when the mineral is worked out;
  - certain capital costs in relation to foreign concessions.

(d) The allowance is currently 25%, except in relation to:
  - expenditure on the acquisition of a mineral asset;
  - pre-trading expenditure on plant or machinery which is sold;
  - pre-trading exploration expenditure,

  where the allowance is 10%. Generally as to allowances, see British Master 'Tax Guide, 1998/1999 at paragraph 2386.

3.1.3 Additional Profits Taxes, and Withholding Taxes. Not applicable, although the introduction of a withholding tax is being discussed between the UK and its EU partners.

3.2 Non-Revenue Related Taxes

3.2.1 Royalties: As noted, there is in the UK a single regime for coal royalties, administered by the Coal Authority. Royalties are levied on a tonnage basis and are negotiable. Royalties are allowable against profits for Corporation Tax purposes. Royalties. These are payable to the Coal Authority. Royalty rates are negotiated with the Coal Authority by producers on a case by case basis and are commercially confidential. Royalties in respect of deep mined coals are reckoned currently to be around 10p-20p per tonne. Royalties for opencast coal are significantly higher - around £2.00-£3.00 per tonnes, reflecting the higher profitability of opencast output.

3.2.2 Value Added Tax: As noted, domestic coal (and other forms of energy supplied to the domestic market in the UK) is now subject to a special rate of 5% VAT, compared to the standard rate of 17.5%.

3.2.3 Property Taxes: Commercial rates are levied according to the "rateable value" of the premises. They are collected by the Rating Authority. Rateable values are determined by the District Valuer of the Inland Revenue, with appeal to the Lands

Tribunal. There are wide variations in the percentages charged by different Rating Authorities. Commercial premises includes both deep mines and opencast sites.

3.2.4 Salary and Wages Taxes: Income Tax has already been referred to. This is deducted at source under the PAYE system, on the basis of a tax code assigned by the Revenue to the individual and reflecting the employment benefits and tax allowances to which he is entitled.

3.2.5 In addition, both the employer and the employee must pay National Insurance Contributions. The employer's contribution is currently 12.2% on all income (including benefits in kind) after the first £3,432.00 per annum. The employee's contribution is 10% after the first £3,432.00, up to £26,000.00 per annum. Notionally, these payments are contributions to a National Insurance Fund to pay for a range of social security benefits. In reality, they are part of general taxation and the cost of benefits is met on a "pay as you go" basis.

3.2.6 Registration and Stamp Fees: Fees are charged by the Coal Authority for processing applications from coal companies for leases and licences. The amount is related to the tonnage in the application. The Coal Authority also charge fees for consent to explore for coal, and the provision of information. There are no stamp duties or fees applicable to the coal industry, other than the stamp duties which apply generally to legal documents - eg, coal leases. The amounts are related to the rents and other consideration reserved.

3.2.7 Other: There are no sales taxes, export duties, import duties, customs duties or fees, or payroll taxes.

3.3 Indirect or Quasi - Taxes

3.3.1 There are no foreign exchange regulations nor requirements for government equity.

3.3.2 Performance Bonds. None, as such. However, all coal companies are obliged to:

(a) comply with the conditions of the planning permissions applicable to particular projects. These may be performance - related in the sense of placing limits on, eg the operation of machinery, noise emissions, the size of stock takes etc. The direct and opportunity costs of compliance with such conditions may be substantial. The Planning Authority may require a restoration bond (cash or guarantee) to cover the cost of restoration at the end of a project.

(b) meet Coal Authority requirements for securing the cost of subsidence claims and leasehold liabilities. Security for subsidence costs may be either a cash deposit, or a guarantee or letter of credit. The Act provides that the security is to be excluded from any liquidation on insolvency. Security for leasehold liabilities (eg shaft filling and capping) is dealt with in the lease documentation; there is no statutory provision requiring it.

3.3.3 Social Costs Involving Local Communities. The impact of mining operations on communities is a matter to be considered at the planning stage and is one of the considerations taken into account when the decision is made whether to grant planning permission and, if so, what conditions to attach. In practice, such conditions may be negotiated between the applicant and the Planning Authority, and may involve the applicant (where the value of the project justifies it) in substantial costs - eg. on provision of new roads, new housing, or the re-routing of railway lines.

3.3.5 The concept of "planning gain" has already been mentioned. This goes wider than compliance with conditions. It is an explicit recognition that the power of the Planning Authority to grant permission for development has an economic value which should be "shared" with the community. This may include the provision, at the developers expense, of local amenities or improvements to the local infrastructure not directly related to the development. There is statutory provision under the Town and Country Planning Acts for binding agreements to be made between Planning Authorities and developers to secure arrangements of this kind.

3.3.6 The coal price is not regulated.

PART 4: ENVIRONMENTAL FRAMEWORK

4.1 Major Legal Instruments

- Town and Country Planning Acts 1947-1990, and regulations thereunder.
- European Union Environmental Impact Assessment Directive (85/337).
- Town and Country Planning (Assessment of Environmental Effects) Regulations, 1988.
- Environmental Protection Act, 1990.
- Environment Act, 1995.

4.2 National Policies Laws and Institutions for the Environment

4.2.1 The National Policies of the UK for the environment (as in many other areas) are subject to the implementation of obligations under the European Union Treaty and compliance with European Union Directives for the harmonisation of the laws of member states. In the context of the environment, the intention is to ensure a consistent approach and (broadly) common standards across the EU.

4.2.2 In the UK, these compliance obligations have been met largely by the use of secondary legislation made under delegated powers contained in the Town and Country Planning Acts, the Environmental Protection Act 1990 and the Environment Act, 1995.

4.2.3 Consistently with this approach environmental regulation of industry (including Coal and the Extractive Industries) is increasingly being carried out through consent procedures at the planning stage of a development.

4.2.4 The Town and Country Planning system requires that almost all types of development involving land use must obtain planning consent from the appropriate authority. Applications for mineral development are dealt with, in the first instance, at County level, by the Mineral Planning Authority. Large developments may be 'called in' for decision by the Secretary of State for the Environment.

4.2.5 A particularly significant consideration is whether land has been designated for special protection on environmental grounds. There are a number of different types of designation:

(a) National Parks, where there is a strong presumption against any development with the aim of conserving and enhancing the natural beauty, wild life and cultural heritage of the areas specified;

(b) Sites of Special Scientific Interest. These are designated under the Wildlife and Countryside Act, 1981. Such sites tend to be small, but they are numerous. In practice, the presumption against development is weaker than in the case of National Parks;

(c) National Nature Reserves. These are sites of special scientific interest considered to be of particular importance. The presumption against development is strong;

(d) Special Areas of Conservation. These were introduced in 1994, to comply with a European Directive. There is a very strong presumption against development.

4.3 Integrated Pollution Control

4.3.1 The control of emissions of pollutants has traditionally been subject to separate legislation for air, water and land, and the responsibility of separate agencies for each of the media. A new approach was needed when it became clear that controls were often overlapping and that it was necessary to consider the environment as a whole. Integrated pollution control (IPC) was introduced between 1990 and 1996 to establish a consents system for industrial processors, which would ensure that the effects of emissions to any medium are considered in the context of the environment as a whole, and that to minimise environmental impact the "best practicable environmental option" (BPEO) is used, and that emissions of certain prescribed substances are prevented or minimised. Processers should represent the "best available technique not entailing excessive cost" (BATNEEC). This coordinated approach to regulation, under the auspices of the Environment Agency in England and Wales and the Scottish Environmental Protection Agency in Scotland has the advantage for industry of providing it with "one stop" for emissions consents.

4.3.2 IPC was established under Part 1 of the Environmental Protection Act, 1990, as amended by the Environment Act 1995. The EPA, however, only provides a framework, with Section 2 providing for secondary legislation to prescribe processers and substances for control under the Act. These powers have been used extensively and regulations form a significant part of IPC law - eg. the Environmental Protection (Prescribed Processers and Substances) Regulations, 1991.

4.3.3 The arrangements described above apply to the coal and other extractive industries in the same way as to any other kind of development or industrial activity or process. There is no policy, either in the European Union or the UK to favour coal mining eg. by creating presumptions under the planning process or by easement of pollution control requirements. On the contrary, because of the nature of coal mining developments (particularly opencast coal sites) new development and compliance with pollution controls is becoming ever more difficult.

4.4 Requirements for Environmental Impact Assessments

4.4.1 The European Unions Environmental Impact Assessment Directive (85/337) was implemented in the UK mainly through the land use planning system (see above). In addition, there are various specific provisions for types of development which have separate consent procedures.

4.4.2 The Town & Country Planning (Assessment of Environmental Effects) Regulations 1988 provide the basis for environmental assessment in England and Wales (with provisions for Scotland and Northern Ireland being made soon thereafter). Under these regulations planning permission for development cannot be given to any project to which the regulations apply unless the developer has produced an Environmental Statement and this has been taken into consideration in reaching the decision on the application.

4.4.3 The Regulations create two categories of project. those for which the production of an Environmental Statement is mandatory (listed in Schedule 1 to the regulations) and those for which the production of an Environmental Statement is at the discretion of the relevant planning authority (schedule 2). Coal mining comes under schedule 1. An Environmental Statement must be produced by the applicant to accompany the application for development consent.

4.5 Environmental Quality Management/Standards

4.5.1 As noted, the management of environmental quality and the setting of standards is achieved:-

(a) Through consent procedures under the Town and Country Planning process for land use; and

(b) Through regulations made under the framework provided by the Environmental Protection Act, 1990 and the Environment Act 1995 - ie Integrated Pollution Control and Environmental Impact Assessment.

4.5.2 The management and enforcement of Integrated Pollution Control rests with the Environment Agency, set up under the 1995 Act.

4.6 Reclamation Requirements

4.6.1 Reclamation requirements are covered by:-

(a) Conditions attached when planning permission for development is granted (see above);

(b) In relation to coal mining, by the Coal Authority, when the requisite leases and licences are granted (see above);

(c) By the Environment Agency, under the Mines (Notice of Abandonment) Regulations 1998, made under the Water Resources Act, 1991.

4.6.2 The Mines (Notice of Abandonment) Regulations. 1998 set out the information required in the notification to the Environment Agency. This should include details of:-

(a) The nature of any underground waters in the mine;

(b) Past and projected future discharges from the mine;

(c) Proposals for monitoring ground water levels and chemical composition; and

(d) Proposals to mitigate discharges of water from the mine.

4.6.3 This information is intended to allow the Environment Agency to ensure that the dewatering operations do not result in the pollution of other waters. The Environment

Agency is required to inform the relevant Local Authority of land that it considers may become contaminated land as a result of the abandonment of the mine - see Energy Law and Regulation in the European Union for a fuller treatment of this topic, at paragraph 26-42.

PART 5: INSTITUTIONAL ARRANGEMENTS

5.1 Administrative Structure for the Management of the Coal Sector

5.1.1 The UK has no 'grand design' for the coal industry. The settled policy of successive Governments has been to leave the production and supply of coal in the United Kingdom to the market. This means that the remaining concerns of Government in relation to the coal industry are confined to:-

(a) The effective management of the historic liabilities which remained in the public sector on privatisation of British Coal. These are substantial and are split between those resting with HMG direct ('human' liabilities - eg. industrial disease) and those taken on by the Coal Authority ('physical' liabilities - eg. subsidence outside the areas of responsibility of the private sector operators, pollution from mine workings abandoned prior to privatisation);

(b) The maintenance of an effective leasing and licensing regime for private operations. This is the task of the Coal Authority (see above); and

(c) Seeking to ensure that the environmental and social impacts of coal mining are acceptable. This is achieved through the land use planning process, and the other elements of the environmental framework (see above).

5.1.2 Department of Trade and Industry (DTI) is the Sponsoring department for the coal industry carries prime responsibility for coal policy. The Coal Directorate of the DTI deals with the historic liabilities resting with HMG, and is responsible for the Coal Authority.

5.1.3 Department of the Environment (DoE). Responsible for policy in relation to Town and Country Planning, and the environmental framework. The Secretary of State for the Environment may decide Town and Country Planning applications that are 'called in' from the Local Planning Authorities and has jurisdiction to hear appeals from the decisions of Local Planning Authorities.

5.1.4 Department of Employment (DE). Responsible for policy in relation to labour law and for health and safety at work. The sponsoring department for the Health and Safety Commission and the Health and Safety Executive (see above).

5.1.5 Coal Authority. The functions of the Coal Authority have been described. It is not, in any real sense, either responsible for policy or the economic regulation of the coal industry. The statutory duty to 'secure so far as practicable an economically viable coal mining industry' - section 2(1)(a) of the Coal Industry Act, 1994 in practice means no more than administering the leasing and licensing arrangements reasonably and efficiently.

5.1.6 Local Authorities. As already indicated they have responsibilities in relation to the setting and collection of commercial rates; the operation of the Town and Country Planning System; in relation to air pollution in cases where responsibility has not been transferred to the Environment Agency.

5.3 Linkage of the Coal Sector with the Power Sector

5.3.1 In terms of the legal and regulatory framework within the UK, there are no such linkages. There is no formal obligation on the privitised electricity generators to use UK coal and, as noted, their willingness to do so is reducing. Dealings between the coal and power sectors in the UK, therefore, rest on commercial contracts negotiated between individual producers and generators.

5.3.2 The economic regulation of the power sector by the Office for Electricity Regulation (OFFER) has, in practice, had significant implications for the coal industry. The policy of OFFER has been directed towards:-

(a) Reducing electricity prices; and
(b) Increasing competition in the power sector.

5.3.3 These policies have resulted in the electricity generators adopting a tough commercial approach to fuel procurement and the opening up of electricity generation to new entrants who have opted for gas generating stations which have shorter lead times, lower construction costs and better pollution characteristics than coal fired stations.

5.4 Linkage of the Coal Sector with the Transportation Sector

5.4.1 Again, in terms of the legal and regulatory framework in the United Kingdom, there are no linkages. The railways in the United Kingdom are privitised and seek to operate on a commercial basis - although the operators are still subsidised to a substantial extent through the rail franchises under which they operate.

5.4.2 The general practice in the UK is for the coal producers to sell their coal to the power generators at the pit head, so that the transportation of coal from the mine to the power station is the responsibility and cost of the customer.

5.4.3 While the major coal fired power stations are serviced by rail transport, there is also significant use of road transport - particularly hauling coals from opencast coal sites where the relatively short duration of working has not justified the installation of a rail head. Again, arrangements for road transport are dealt with commercially.

PART 6: SOCIAL ASPECTS

6.1 Principal Stakeholders Within the Economic 'Footprint' of Existing/Proposed Mine

6.1.1 There is no separate framework or regime covering the social aspects of coal mining. These are taken into account:

(a) politically - ie through lobbying by individuals, Trade Unions, pressure groups, producers etc at both local and national level;

(b) by the Town and Country Planning system in which, as noted, development decisions must take account of relevant considerations, including the economic and social implications of the proposed development for eg. employment and local communities.

6.1.2 It must be remembered also that, as the coal industry in the UK has declined, so the economic 'footprint' - and the number and influence of the stakeholders - has reduced. In terms of economic and social significance, coal has been overtaken - even in the remaining coalfield areas - by other activities in particular the service industries.

6.1.3 Stakeholders include:-

(a) The mine operator;
(b) Shareholders;
(c) Employees, and their families;
(d) The Trade Unions;
(e) Local Authorities collecting commercial rates;
(f) Neighbouring communities and individuals, including property owners who may be affected by subsidence, or by other operations of the mine.

6.1.4 Mine closures. These are primarily a matter for the mine owner. They are a matter also for the Coal Authority and the Environment Agency, so far as any environmental impact of closure is concerned. The Planning Authority will be concerned to ensure that planning conditions relevant to closure are complied with - eg. restoration requirements. Mine closures may also have political and industrial relations consequences. It is always likely, therefore, that closures will be preceded by a consultation with Trade Unions and Government.

PART 7: STAKEHOLDERS

7.1 Mining Companies.

7.1.1 There are now some eighteen private companies in the deep mine and opencast sectors who are coal licensees with production in excess of 0.5 Mt.

7.1.2 In the deep mine industry there are six companies with mines in excess of 0.2 Mtpa output capacity. RJB Mining has fourteen mines, and Scottish Coal, Midlands Mining Blenkinsopp Collieries, Hatfield Coal Company and Goitre Tower Anthracite Ltd, each have one mine. Only RJB Mining and Scottish Coal have both underground and surface mining interests.

7.2 Coal Consumers/Importers.

7.2.1 The principal coal consumers are:-

(a) National Power Plc
(b) Powergen Plc
(c) Scottish Power Plc

(d) Eastern Electricity Plc
(e) British Steel Plc
(f) Coal Products Ltd
(g) Alcan (UK) Ltd

7.2.2 The major coal importers are:-
(a) National Power and Powergen (two generating stations on or near the coast).
(b) British Steel (through Immingham and Redcar, for carbonisation).

7.3 Unions.

7.3.1 The principal unions in coal mining are:-
(a) National Union of Mineworkers. This is the largest union, with about 5,000 paid up mineworker members;
(b) NUM (Colliery Officials and Staff Association). This is a constituent association of the NUM. It now has no more than a few hundred members;
(c) Union of Democratic Mineworkers. The union was formed in 1985, after a breakaway from the NUM following the 1984/85 strike. The union has about 2,000 mineworker members;
(d) National Association of Colliery Overmen Deputies and Shotfirers. This is the supervisor's union and has only a few hundred members. The Midlands Area of NACODS has split away and is now a separate union;
(e) British Association of Colliery Management Staffs. This is the staff association for colliery managers and for other management grades in the coal industry. Again, it has only a few hundred members;
(f) GMB/APEX. This a major multi-industry union with a membership of over 1 million. It has picked up some membership in the coal industry among clerical and supervisory grades.

7.5 Local Communities

7.5.1 The Coalfield Communities Campaign is a lobby group set up by Local Authorities in coalfield areas with the task (as the name implies) of campaigning for coalfield communities. The objective is grand aid, both from Central Government and the European Union for coalfield rehabilitation, rather than expansion of coal production.

7.7 Associations of Producers

7.7.1 CoalPro was set up on privatisation as a vehicle for lobbying Government. Has achieved nothing of any significance.

7.7.2 There is a much longer-standing Coal Trade Association, representing the interests of coal traders.

LEGAL AND REGULATORY
STUDY OF THE
INDIAN COAL SECTOR

COUNTRY REPORT

USA

COUNTRY PAPER

UNITED STATES

1.0 Sector Background

1.1 History

The United States coal mining industry dates back to 1740's when coal fulfilled part of the energy requirements of colonial Virginia. Regulation of the coal mining industry, including mandatory environmental protection and reclamation to mitigate the effects of increasing volumes of surface mining, began in 1939 in West Virginia, with several states following in the ensuing years. With relentless coal demand during the Second World War, mining proceeded with very little concern for the environment. Mining areas were characterized by open, unfilled pits, dangerous highwalls, waste material burying trees and other vegetation, buried or washed away topsoil, rapidly eroding slopes, landslides, polluted water collecting in mine pits, and streams clogged with sediment and contaminated with acid rain drainage.

Coal production increased somewhat from 1950 to the mid-1970's, but the expected acceleration in coal demand that followed the oil embargo and a growing environmental movement spurred new concern for the environmental impacts of coal mining in the 1970's. Some states passed laws to regulate mining and reclamation, but producers learned that the states with the least stringent environmental enforcement offered a cost advantage. The lack of uniformity among states and the increased acreage of unreclaimed land and associated pollution, generally at the expense of environmental quality, drove a public movement for national law.

The Federal Surface Mining Control and Reclamation Act was enacted in 1977. At the same time, worker health and safety was of increasing concern. The Mine Safety and Health Act, the purpose of which is to reduce accidents and fatalities and protect miners' health from unsafe practices was enacted in 1969 and amended in 1977.

1.2 Coal Production

Over the last half century, the methods, location and rank of coal production have dramatically shifted in the US. In 1950, 421 million tons (75%) were produced from underground mines and 139 million tons (25%) were produced from surface mines. By 1997, that proportion had shifted dramatically. Of the 1088 million tons produced, 419 million tons (39%) were from underground mines and 669 million tons (61%) were from surface mines. At the same time eastern production has grown slowly (from 524 million tons in 1950 to 577 million tons in 1997), while western production has boomed (from 36 million tons in 1950 to 511 million tons in 1997). The effect of western production is also reflected in rank: subbituminous and lignite coals comprise of 40% of today's coal production.

1.3 Coal Employment, Productivity and Worker Safety

In contrast to the dramatic rise in production, employment has plummeted. In 1953, there were 293 thousand miners working in about 6600 mines. By 1996, there was an average of 85,000 workers working in 1903 mines. While the number of mines fell, the output per miner quintupled. Productivity quadrupled in both underground and surface operations, but the rising proportion of surface production helped to further boost productivity increases. Injuries have decreased in to about 10% of and fatalities and fatalities are about 2% of their 1930 levels in absolute terms.

1.4 Contribution to the Economy

The estimated direct economic value (business income, personal income, federal, state and local taxes) of the US coal mining industry was $15.5 billion in 1995. Of this, $1.3 billion was Federal tax revenue and $1.4 billion was in state and local revenue. Direct business income was $7.5 billion and personal income was $5.2 billion.

The primary changes in US coal markets are driven by competition from other fuels and environmental regulations. In the 1950's coal production declined because large consuming sectors (residential and commercial, steel production, and transportation) substantially reduced their coal use by substituting oil and natural gas. In the 1960's, coal demand began to grow with the emerging dominant coal consumer--electricity generation. Electricity output doubled in the decade, growing at about twice the pace of the economy, as the country rapidly electrified. Even with the growth in electricity in the 1960's, coal lost market share, primarily to oil, natural gas and hydroelectric power.

The Arab oil embargo (1973), the exhaustion of prime hydroelectric sites, and a nuclear accident (1979) changed that balance. The embargo brought higher oil prices, which combined with less gas availability and legal restrictions on oil and gas use in electricity generation, effectively capped oil and gas consumption in electricity generation. With no access.to oil, gas, or hydro resources, electricity generators planned coal and nuclear units.

Subsequent to an accident at a nuclear unit in March 1979, no new nuclear plants were built. Due to this, coal has become the fuel for over half of the electricity generated in the US. The primary challenge to coal's supremacy in the electricity sector in the last two decades has been conservation (electricity use per dollar of GNP has fallen dramatically) and the reemergence of natural gas as a fuel for electricity (the result of burgeoning supplies in a deregulated market and new, highly efficient combustion technologies that are more readily used with natural gas). This new century will see further incursions upon the use of coal due to conservation, natural gas, and potential new environmental regulations, and controls on greenhouse gas emissions. Because of these issues, producers and users are working on new technologies and approaches to prevent market erosion.

2.0 The Basic Legal Framework

2.1 Coal Ownership

Access to coal reserves in the US may be 1) owned by the federal or state government, 2) owned outright by individuals or corporations, or 3) leased from one party to another. Coal rights may be for the coal only (owned in "fee"), for the coal and the surface ("fee simple"), or by means of control through surface ownership. Surface mining methods require control of both the coal and the surface, whether by fee, fee simple, or lease arrangements. Underground exploitation requires control of only the coal, unless surface damage (such as through subsidence) occurs.

Approximately two-thirds of US recoverable coal reserves are controlled by the federal government (144 billion tons out of the 212 billion tons held by the top 28 largest reserve holders). However, only 20% - 25% of current annual coal production comes from federal coal lands. The majority of government coal reserves are located west of the Mississippi River.

2.2 Coal Oversight

Federal lands are administered by the Bureau of Land Management (BLM), Department of the Interior. The extent of this administration relative to coal includes leasing federal coal to interested parties through a competitive bidding procedure, administering royalty receipts, promulgating land use activities, and providing resource conservation oversight.

There is no similar oversight for privately owned coal.

Health, safety and environmental oversight is applied by federal and state agencies to both federal and private coal mining activities.

2.3 Exploration

State permits are required to conduct exploration programs on private property. The nature of the permit requirement is environmental protection. Typically, an application for an exploration permit can be approved within six weeks. Exploration on federal lands also requires approval of the BLM.

2.4 Exploitation

The Mine Safety and Health Administration (MSHA), Department of Labor, administers mining laws and regulations pertaining to all coal exploitation. This administration is usually supplemented by a state mining enforcement agency. The Occupational Safety and Health Administration (OSHA) generally regulate other US industries. Governing law for US coal mines is contained in the Code of Federal Regulations (CFR) Title 30 (Federal Coal Mine Safety and Health Act of 1977 and amendments thereto).

2.5 Permitting

Environmental permitting and compliance is administered by various state and federal agencies, the principal one being either the US or the state Office of Surface Mining Reclamation and Enforcement (OSMRE). The typical permit approval process for a new mine takes approximately two years, including the base-line data-gathering period prior to submission of the application. Extensions to that time may occur if the proposed project meets with adverse public response, a sensitive cultural or environmental issue is discovered, or an Environmental Impact Statement is required.

2.6 Foreign Investment Requirements or Incentives

There are no federal foreign investment requirements or incentives. Any tax holiday or incentive that a mining project may receive on a state or local level is strictly by negotiation between the respective parties.

2.7 Labor Issues

Other than complying with mandated labor laws pertaining to non-discrimination, equal opportunity, and prohibitions against the use of child labor, mining companies and their workforce work together to determine whether or not there will be union representation at the mine and to develop satisfactory work rules and wage rates.

In previous decades, union-operated mines dominated the US coal industry but now non-union mines have the highest workforce. The primary union has been, and continues to be, the United Mine Workers of America (UMWA). The table below illustrates the trend during just the last ten years:

Composition of the US Workforce (Number of Employees)

Year	UMWA	Other Unions	Non-Union	Percent Non-Union
1989	68,002	6,943	60,986	44.5%
1993	42,300	5,980	53,351	52.5%
1998[1]	29,732	5,189	40,737	53.8%

[1] Excluding 8,069 employees whose union affiliation, if any, is unknown.

Productivity at non-union mines is nearly double that of that at UMWA mines, although this is somewhat misleading in that a high percentage of highly productive surface mines is non-union.

2.8 Royalties

Federal coal leases are obtained through a strict competitive bidding process. This process requires interested parties to submit a "bonus bid," which is in addition to the standard royalty rate for the coal. The bonus bids are evaluated by the BLM and the Justice Department to determine if the bids meet satisfactory fair market value standards. Standard royalty rates for federal coal are 12.5% of gross revenue for surface mines and 8.0% for underground mines.

Royalties for privately owned coal are determined by negotiation between the lessor and the lessee. Typical rates may vary from 2% to as much as 10%, depending upon the value of the coal, the mining method, and competitiveness of the target market place.

3.0 Fiscal Framework

3.1 Federal Taxes

3.1.1 General

Federal taxation of the coal industry is.relatively straightforward and is governed by tax codes and statutes. The majority of taxation principles and rates are universal for all U.S. industries. Exceptions are as noted in the appropriate sections. State taxation policies vary considerably from state to state.

3.1.2 Federal Income Taxes

Federal income tax rates and laws for all US businesses are established by Congress and, as such, are subject to occasional change. Current corporate tax rates are progressive, depending upon taxable income, and range from 34% to 39%. A complex formula is used to determine a Minimum Tax.

The Internal Revenue Service, an agency of the Department of Treasury, handles administration of income taxes.

Federal taxable income is determined by the following:

Revenues
Less Operating costs
Less Depreciation
Less Amortized development
Less Depletion allowance
Less Severance tax
Less Regulatory taxes
Less Labor related taxes
Less Property taxes
Less State sales (transaction) taxes
Less Interest expense
Less State Income taxes
Equals Federal taxable income

A discussion of allowable expense deductions from revenues is presented in the following section.

3.1.3 Allowable Expense Deductions to Federal Taxable Income

Depreciation – The purpose of the depreciation deduction is to provide a means by which a business can recapture the capital needed to keep itself in business. In theory, the recaptured annual deductions can be banked to replace worn-out equipment with new equipment in order to sustain the operation. The depreciation method does not take into account the escalation of capital.

In simplified terms, complete units (such as truck) must be depreciated, whereas a component (such as a transmission) can be expensed in the year of purchase. Recovery periods range from three to twenty years, depending upon the item to be depreciated. The percentage of the original value that can be deducted each year is governed by tax law and is dependent upon the asset classification.

Amortized Development – Eighty-five percent of exploration and development costs may be expensed in the year in which they are incurred. The remaining 15 percent is amortized over a five-year period. Assets, such as mining machinery, are not considered as a development expense, but the cost of installing the machinery may be an allowable development expense.

Depletion Allowance – One of the most important tax and cash flow benefits to the US extractive industries is the influence of the depletion allowance. This allowance permits mineral producers to claim sizable federal income tax deductions not available to other industries.

Allowable depletion allowance is the larger of Unit Depletion vs. Percentage Depletion, both of which are determined as follows:

> Unit Depletion = (purchase cost + exploration + development) divided by the reserve tonnage, or
>
> Percentage Depletion = the smaller of a) Statutory Depletion or b) Net Income Basis
>> Statutory Depletion = Depletion Allowance Percentage x Gross Income
>> [The effective Depletion Allowance Percentage for coal is 8.5%], or
>>
>> Net Income Basis = 50% x Net Income Before Taxes

The impact of the Depletion Allowance, based on one US case study, is shown below:

Reduced federal taxable income by	22%
Reduced state tax by	23%
Reduced federal tax by	29%
Increased cash flow by	12%
Increased internal rate of return by	10%
Reduced effective federal tax rate to	26% (from 35%)

Severance Tax – This is the only tax, which is uniquely applied to the extractive industries, such as mining and timbering. A severance tax, where applied, is generally based on the number of units (tons) extracted. Other names for this type of tax include excise, license, privilege, production, or occupation tax.

There is no federal severance tax. The method of determining severance taxes which may be imposed by the state vary from state to state, as well as from commodity to commodity. Effective rates can range to as high as 13% of gross selling price.

Regulatory Taxes – The two primary regulatory taxes imposed upon the US coal mining industry are a black lung (pneumoconiosis) excise tax and a reclamation tax. The black lung tax is imposed to allay the social and medical costs associated with this coal mining caused disease, although modern mine safety and health regulations have virtually eliminated this problem. The reclamation tax is imposed to help reclaim mine properties that were abandoned prior to the advent of reclamation laws (1977). The taxes are as follows:

	Dollars Per Product Ton	
	Surface Mines	Underground Mines
Black Lung Tax	$0.55	$1.10
Reclamation Tax	$0.35	$0.15

Labor-Related taxes – The principle labor related-taxes are FICA (commonly referred to as Social Security), Medicare, Federal Unemployment Tax, State Unemployment Tax, and

Workman's Compensation, which is actually a n insurance but acts as a tax.

Tax	Rate	Maximum Amount Per Year
FICA	6.2%	$ 4,501
Medicare	1.45%	No maximum annual cap
ederal Unemployment	Typically 0.5% to 1.0%	Applied to first $7,000 in wages
tate Unemployment	Typically 0.1% to 0.5%	Varies, but typically applies to first $9,000 - $10,000 in wages
Workman's Compensation	Typically in the 0.5% range	Varies

The employee also pays an equal amount for FICA and Medicare.
Property Taxes – These are ad valorem taxes based on the appraised value of real and personal property. They represent one of the most important sources of revenue to local and state taxing districts for services such as road construction, education, and police and fire protection. Each state and local taxing district applies different tax liabilities. Typical property taxes may range as high as 5% to 10% of revenue.

State Sales Taxes – Coal sales are generally exempt from state sales tax. However, sales tax, in those states where appropriate, may be added to the cost of operating supplies purchased by the mine. State sales taxes may range to as high as 8% of the item cost.

Interest Expense – Finance charges are an allowable deduction.

3.1.4 Miscellaneous Tax Laws

US Federal tax laws also have provisions for loss carry forward/backward and alternative minimum taxes. The laws for these type of provisions are complex and beyond the scope of this document.

There are no coal-specific import or export duties other than those that may apply to general importation of foreign goods or commodities. Neither are there any foreign exchange requirements, government equity participation requirements, or performance bonds (other than for those required for reclamation, as discussed previously). There are no Value Added Taxes (VAT).

There are no federal, state or local royalties imposed upon coal, other than royalties due on federally-owned coal as discussed in Section 2 (Basic Legal Framework).

3.2 State Taxes

3.2.1 General

In addition to the state-imposed taxes previously discussed (property, severance and sales taxes), most states impose income taxes on corporations.

3.2.2 State Income Taxes

State income taxes are generally patterned closely after federal tax laws and are generally applied to all state corporations. Individual state's effective tax rates may range up to 10%.

3.3 Social Costs

US mining companies have no obligations, beyond paying the appropriate taxes as discussed above, to provide for community infrastructure or societal accommodations. Federal, state and local governments use general tax revenues to provide for social costs. The concept of "company" towns is outmoded in the US. Each employee provides for his own living accommodation. Medical costs are borne either through company-provided insurance, private insurance, or, as a last resort, by various governments through Medicare.

4.0 The Environmental Framework

4.1 Major Legal Instruments

The principal laws directly governing coal mining in the United States are the Surface Mining Control and Reclamation Act (SMCRA), which was enacted in 1977, and the Federal Mine Safety and Health Acts of 1969 and of 1977.

SMCRA reflects many years of discussion and disagreement about how to manage coal development. The Act enables the Federal government to respond to citizens and to create an environment where all states would conform to a minimum level of reclamation and thereby distribute the cost disadvantages associated with environmental control. It created two major programs:

An environmental protection program to establish standards and procedures for approving permits and inspecting active coal mining and reclamation operations, both surface and underground.

A reclamation program for abandoned mine lands, funded by fees that operators pay on each ton of coal mined. SMCRA establishes national minimum standards for the conduct of surface mining operations to ensure that environmental impacts are minimized and that the land is restored and reclaimed after mining is complete.

4.2 National Policies, Laws and Institutions for the Environment

The National Environmental Policy Act was adopted in 1969 and is administered by the Council on Environmental Quality. All agencies of the Federal government are responsible for applying the policies of NEPA in all of their actions, which includes issuing funding, leases, permits and administrative procedures. The policies include: acting as a trustee of the environment for succeeding generations; assuring that all Americans have a safe, healthful, productive and esthetically and culturally pleasing surrounding; attaining the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences; preserving important historic, cultural, and natural aspects of our national heritage, and maintaining, wherever possible, an environment which supports diversity and variety of individual choice; achieving a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and enhancing the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

This complex set of sometimes contradictory policies provides the framework for and partially explains the complexities associated with preparing Environmental Impact Statements (EIS). By law, agencies are not only responsible for comply with the policy, but they are also obligated to coordinate and consult with other Federal and State agencies to implement the act and to act or refrain from acting contingent upon the recommendations or certifications of any other Federal Agency.

The Clean Air Act (CAA) was originally enacted in 1967 and has been revised several times since. The CAA, as it relates to coal mining, primarily requires the preparation of an air pollution control plan, an air quality monitoring program, and a plan for fugitive dust control. The principal regulated air pollutant associated with coal mining is fugitive dust; it is controlled under regulations affecting particulate emissions.

The Clean Water Act (CWA) was enacted in 1972 and has been amended several times. Its objective is to restore the chemical, physical and biological integrity of the nation's waters. Under CWA authority, mine operators must control water pollution discharges and obtain National Pollution Discharge Elimination System (NPDES) permits. In addition, mine operators must obtain permits from the US Corps of Engineers if operations affect wetlands.

The Resource Conservation and Recovery Act (RCRA) was enacted in 1976, with several subsequent amendments. Hazardous and solid waste provisions were added in 1984.

The Toxic Substances Control Act (TSCA) was enacted in 1976, with several subsequent amendments.

The **Comprehensive Emergency Response, Compensation and Liability Act CERCLA)**

The Emergency Planning and Right to Know Act (EPCRA)

The Superfund Amendments and Reauthorization Act (SARA), enacted in 1986

4.3 Requirements for Environmental Impact Assessment

NEPA is the law which drives the Environmental Impact Statement process. Any Federal action with the potential to significantly affect the environment must be assessed for its environmental consequences, with the assessment expressed in a document entitled the Environmental Assessment. When significant environmental effect is possible and actions to mitigate the effects are required, an Environmental Impact Statement must also be prepared.

4.4 Planning for Land Use and Natural Resources, E.G. Forestry, Sacred, Lands, Traditional Lands, etc.

SMCRA prohibits *(surface)* mining within the boundaries of national parks, forests, wildlife refuges, trains, wild and scenic rivers, wilderness and recreation areas; in areas which will adversely affect sites listed on the National Register of Historic Places; and within a restricted distance of occupied dwellings, public roads, buildings parks, schools, churches, and cemeteries.

Permitting programs are to provided for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the amended Endangered Species Act of 1973, the Fish and Wildlife Coordination Act, the Migratory Bird Treaty Act of 1918, the National Historic Preservation Act of 1966, the Bald Eagle Protection Act, and for Federal programs only, the Archeological and Historic Preservation Act of 1974 and the Archaeological Resources Protection Act of 1979.

SMCRA regulations require that general land use information be included in permit applications. This includes descriptions of:

The lands subject to surface mining operations and the size, sequence and timing of the sub areas for which it is anticipated that individual permits for mining will be sought.

The nature of cultural, historic and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. (The regulatory authority may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing in the National Register of Historic Places.)

The US Department of the Interior Fish and Wildlife Service conducts the fish and wildlife review. Each permit applicant must provide fish and wildlife resource information for the permit area. The scope and level of detail for such information is determined by the regulatory authority in consultation with State and Federal agencies responsible for fish and wildlife, but can include listed or proposed endangered species or habitats (under the Endangered Species Act of 1973), habitats of unusually high value for fish and wildlife, other species or habitats identified through agency consultation, a protection and enhancement plan, protective measures that will be used during the active mining phase of operation, enhancement measures that will be used during the reclamation and post mining phase.

Many of the land use decisions are based on a consensus developed by regulator and coordinating agencies. SMCRA regulations dictate that the permit application include maps showing all boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area, the boundaries of the land which the applicant has the legal right to begin surface mining activities, the boundaries of all areas proposed to be affected by the mining activities over the total life of the project, the location of major surface and underground manmade features (e.g. pipelines, electricity transmission lines and major roads running within 100 feet of the proposed permit area), the location of surface water supplies within the hydrologic area and those surface waters that will receive discharges, the boundaries of public parks, cultural or historical resources (eligible or listed on the National Register of Historic Places), cemeteries, within 100 feet, and any land in the National System of Trails or the Wild and Scenic Rivers System.

A separate set of maps, plans and cross sections are required for proposed activities, including test borings and core samples, environmental (air, water, fish and wildlife) monitoring stations, characterization of the coal seams, crop lines, and other mining activities, including abandoned mines, waste disposal sites and treatment facilities, location of subsurface water in permit or adjacent areas, location of surface water bodies, and location of oil, gas and water wells.

The regulatory authority may also require:

1. A statement of the climatological factors that are representative of the proposed permit area.

A map or aerial photograph that delineates existing vegetative types and a description of the plant communities within the permit area and proposed area.

5.0 Institutional Arrangements

The US Office of Surface Mining Reclamation and Enforcement (OSMRE) enforces the act and develops national regulatory standards. EMSHA

A special feature of SMCRA is that State may assume the responsibility for implementing the objectives of the national law by passing a counterpart statute and developing a regulatory program that is approved by the Federal Government (Secretary of the Interior). When the states are given jurisdiction, they have "primacy". Conversely, when states are not following their required regulatory programs, the Federal government can take responsibility for the regulatory program within that State to ensure that its objectives are being met. Any State with an approved State program may elect to enter into a cooperative agreement with the Secretary (of the Interior) to provide for state regulation of surface coal mining and reclamation operations *on Federal lands* within the state. Native lands are outside the control of the States; therefore, surface mining on native lands is regulated by the Federal OSM, in consultation with the Bureau of Indian Affairs and the Bureau of Land Management.

Almost all states that have coal deposits have developed their regulatory programs and have received approval of their programs by the national government. The Federal government assists states in implementing the Act by providing grants to states to fund 50% of their regulatory programs. OSM also provides substantial training to state regulatory program personnel to improve and maintain their technical capability.

SMCRA governs mining practices. In addition, numerous laws affecting media (air, water, and land) also affect mining. A "regulatory authority" administers each of these laws. In some cases, that authority is a Federal agency and in some cases it is a state agency. The primary determinant of which is the processing authority is whether the federal Environmental Protection Agency (USEPA) or other federal authority has approved the state plan for implementing a specific environmental act. For example, in the state of West Virginia, the state administers the SMCRA program and the programs relating to the Clean Water Act (e.g NPDES permits and wetlands) but not the programs relating to the Clean Air Act (e.g. particulate emissions). The reason for this difference is that USOSM and USEPA-Office of Water have granted West Virginia primacy over their respective jurisdictions, but

West Virginia has not received similar authority from USEPA-Office of Air Programs.

6.0 Social Aspects

The principal stakeholders within the economic "footprint" of a mining venture, other than direct employees, are the local community businesses and residents. Typically, spin-off revenues to the local community may be in the order of three to five times direct mine wages. This is in addition to tax revenues for infrastructure and education. The term "local" community, however, is quite broad. The road system in the US provides access to workers from as much as 50 miles from the actual job site.

7.0 Stakeholder Input

One of the more controversial aspects of SMCRA is the seemingly unlimited opportunity for public comment and intervention. SMCRA provides for anyone whose interests may be adversely affected by proposed mining to petition to have specific lands designated unsuitable for surface coal mining. Citizens can participate in all aspects of the decision regarding mining and reclamation, and allows citizens to take legal action to ensure that the Act and its regulations are being enforced. Citizens may recover the costs of litigation from the Federal government where they prevail on the issue under litigation.

8.0 Coal Pricing

8.1 Sales

In the US, coal prices are established as the result of negotiations between the buyer and seller. No government agency intervenes in this process. In general, buyers have multiple sources of coal and therefore can use competition in the coal market to derive the best price for the preferred quality. Where buyers are dependent on one mine or one transportation link, competition in the downstream market (typically electricity) limits the capability of the coal producer to exercise monopoly pricing. Competition among electricity generators is particularly strong because the generation market has substantial excess capacity that is only taxed on the hottest or coldest days.

Numerous types of coal sales agreements are in force in the US. The two broadest categories are "term" contracts and "spot" contracts. Term contracts are generally for a period longer than one year and can extend to as long as twenty years. Modern term contracts longer than five years generally have a "market reopener" clause, wherein either party can reopen negotiations based upon then current market prices. The other party can be required to meet the new price or forfeit the contract. Other types of term contracts may include provisions for a fixed price, a definitive scheduled increase, or base price plus escalation determined by changes in predefined price indices. "Cost-Plus" contracts, wherein the buyer pays for the cost of mining plus a management fee, are becoming obsolete in the US.

In situations where the buyer owns the coal reserve, the owner may hire a contract miner to operate the mine. Pricing under this arrangement may be a fixed-price basis, a unit-price basis, a cost-plus arrangement, a joint venture shared cost-basis.

Spot sales agreements typically may be for either a single delivery or set quantity to be delivered over a period of one year or less.

8.2 Transportation

There are numerous modes of coal transportation used in the US and numerous types of transportation contracts. The majority of coal produced in the US is transported by rail, as noted below:

US Coal Transportation

Transportation Mode	Percentage of Total Coal Movement
Rail	61.5%
River	14.0%
Great Lakes Freighter	1.0%
Tidewater	0.8%
Truck	11.7%
Conveyor and Pipeline	11.0%

Various modes of transportation may be involved for a single shipment, such as truck-rail-river.

Some US coal buyers supply their own rail cars. In these cases, the buyer takes ownership of the coal at the seller's loadout facility and assumes the full cost of transportation. In other cases, the seller may arrange for transportation, in which case transfer of coal ownership is at the point of delivery. The railroads, which are generally private enterprises, serve as the agent.

Rail tariffs, in simplified terms, are negotiated between the respective parties. The Surface Transportation Board provides oversight.

For barge shipments, the seller maintains possession of the coal until the time that the coal is loaded on the barge. Ownership and responsibility beyond that point depend upon the coal sales agreement.

Ownership of the coal at mine-mouth power plants is typically transferred at the plant's dumping facility or stack pile.

10.0 Key Changes in Legal and Regulatory Framework

The three primary legal and regulatory impacts to the US coal industry have been the result of the following:

10.1 Clean air Act Amendment of 1989 (CAAA)

The CAAA was implemented to protect US air quality. In simplistic terms the CAAA mandated that coal-fired power plants meet strict emission standards in two phases:

> Phase I – As of January 1, 1995, power plant emissions were to be limited to no more than 2.5 pounds of sulfur dioxide per million Btu's burned (lbs SO_2/Mbtu). The two primary methods of achieving this standard were to switch to low sulfur coal or to

construct and use flue-gas desulfurization units (scrubbers). Another method used was to purchase "clean air credits" from plants that were below the Phase I limit prior to implementation of the law.

Phase II – As of January 1, 2000, coal-fired power plants must not exceed emission levels of 1.2 lbs SO_2/Mbtu. To achieve this difficult level of emission standards, the majority of power plants plan to switch to super-low sulfur coal. Clean air credits may still be used.

The impact of this law has been or will be a near disaster to high-sulfur coal producing districts, such the Illinois Basin, but it has been a major help to low-sulfur coal producing districts such as the Powder River Basin. Ironically, though, coal prices from both high-and low-sulfur coal districts have not changed significantly to each other. High-sulfur coal is still in demand at those plants that built scrubbers and in those plants where blending high- and low-sulfur coals is acceptable. Geography, hence transportation costs, is a strong economic factor.

10.2 Federal Mine Safety and Health Act of 1969

Initially, the impact of the Act was that productivity was reduced each year. Finally, about ten years after implementation mine operators and equipment manufactures were able to overcome the restrictions of the law to the point where productivity is currently higher than it ever has been. The health and safety of coal miners have improved dramatically since implementation of the Act.

10.3 Federal Surface Mining Control and Reclamation Act of 1977

The federal surface mining laws, while not having as dramatic an impact on the industry or the workforce as the Mine Safety and Health Act, has had a major impact on the environment and on how American's now view the coal mining industry. In addition to establishing the permitting process and environmental monitoring, this Act was responsible for the cleanup of abandoned mine sites. Mine operators have learned to cope with the regulations and now produce coal at the lowest prices in history (in terms of deflated dollars).